

***United States Court of Appeals
for the Second Circuit***

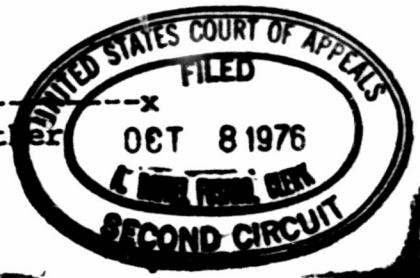


JOINT APPENDIX

16-7374

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

-----x-----
VANESSA TAYLOR, on behalf of herself and all other
persons similarly situated,



PLAINTIFFS/APPELLANTS,

- against -

CONSOLIDATED EDISON CO. of NEW YORK, INC.; CHARLES F.
LUCE, individually, and in his capacity as Chairman
of CONSOLIDATED EDISON CO. of NEW YORK, INC.; ARTHUR
HAUSPURG, individually, and in his capacity as Presi-
dent of CONSOLIDATED EDISON CO. of NEW YORK, INC.;
THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW
YORK; ALFRED E. KAHN, individually and in his capacity
as Chairman of the Public Service Commission of the
State of New York; and EDWARD P. LARKIN, CARMEL
CARRINGTON MARR, HAROLD A. JERRY, JR., and EDWARD
BERLIN, each individually and in his capacity as Com-
missioner of the Public Service Commission of the
State of New York, CONNIE ROHAN, as Agent of the Public
Service Commission,

C.A. DOCKET

NO. 76-7374

DEFENDANTS/APPELLEES.

-----x-----
AN APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

JOINT APPENDIX ON APPEAL

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PAGINATION AS IN ORIGINAL COPY

JOINT APPENDIX
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*Appendix page numbers appear on top of each page.

- 3-26-76 Complaint filed. (1) (c) 10
 3-27-76 Notice of motion for a preliminary injunction ret 4-19-76 filed. (2)
 3-27-76 Pltff's memorandum of Law filed. (3)
 3-27-76 Unsigned TRO filed. (4)
- 4/1/76 Notice of motion for preliminary injunction and pltff's memorandum of law filed ret. 4/19/76 (5,6)
- 4/15/76 Summons ret'd and filed. Executed. (7)
 4/16/76 By BRUCHHAUSEN, H-Stip. for adjournment dtd 4-15-76 re pltffs' motion for a preliminary injunction adj'd to 5-17-76 filed (8)
- 4/17/76 Notice of motion ret. 5-17-76 with memo of law to dismiss filed. (9/10)
 (to dismiss action against defts THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK, ALFRED E. KAHN, EDWARD P. LARKIN, CARMEL CARRINGTON MARR, HAROLD A. JERRY, JR. AND CONNIE ROHAN).
- 4/21/76 Notice of motion ret. 5-17-76 to dismiss action filed on behalf on defts Charles F. Luce, Arthur Hauspurg and Consolidated Edison Company of New York filed. (11)
- 4-21-76 Defts (Luce etc.) Memorandum of Law in opposition of Motion of Preliminary injunction and in support of motion to dismiss complaint filed. (12)
 Supporting affidavits of RICHARD ARCARI, HERBERT WARNE etc. filed. (13)
- 5-7-76 By BRUCHHAUSEN, J.- Order adj'd of motion ret. 5-17-76 to 5-27-76 etc., filed. (14)
- 5-14-76 Notice of Motion for Class Certification, Summary Judgment, and Permanent Injunction, ret. 5/27/76 filed. (15)
- 5-14-76 Pltff's Memorandum in Support of Motion for Summary Judgment, Permanent Injunction, and Class Certification and in Opposition to Deft's Motions to Dismiss filed. (16)
- 6-8-76 Deft statement pursuant to rule 9(g) with memo of law in response to pltff's motion for summary judgment etc., filed. (17/18)
- 6-9-76 Statement on behalf of the Public Service Commission filed. (19)
 6-9-76 Memorandum of PSC in reply filed (20)
 6-10-76 Before BRUCHHAUSEN, J.-Defts motion to dismiss the complaint argued. Decision reserved. Pltffs motion for a preliminary injunction filed. Decision reserved.
- 6-28-76 By BRUCHHAUSEN, J.- Memo and order denying pltff's motion for summary judgment and granting defts motion to dismiss the complaint filed. (21)
- 6-30-76 JUDGMENT dtd 6-29-76 dismissing the complaint filed. (22)
 7-6-76 By BRUCHHAUSEN, J.-Order dtd 6-1-76 granting defts motion to dismiss the complaint etc filed. (23)
- 7-26-76 Notice of motion to proceed in forma pauperis ret 8-6-76 filed. (24)
- 7-30-76 Notice of appeal from order dismissing complaint filed (25)
 8-2-76 Docket entries and duplicate of notice of appeal mailed to c of a
- 8-9-76 By PRATT, J.- Order dtd. 8-6-76 that Con Ed shall not discontinue electric service until determination of appeal etc., filed. (26)
- 8-9-76 By PRATT, J.- Order ttd. 8-6-66 granting motion to proceed in forma pauperis filed on back of doc. # 24.
- 8-6-76 Before PRATT, J.- Case called for motion to proceed in forma pauperis Motion granted Stip pending appeal, deft Con Ed will not withhold or discontinue electric service to pltff, So Ordered by Judge Platt
- 8-13-76 Civil appeal scheduling order filed. (27)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

VANESSA TAYLOR, on behalf of herself and all
other persons similarly situated,

PLAINTIFFS,

- against -

CONSOLIDATED EDISON CO. of NEW YORK, INC.;
CHARLES F. LUCE, individually and in his capacity as Chairman of CONSOLIDATED EDISON CO. of NEW YORK, INC.; ARTHUR HAUSPURG, individually and in his capacity as President of CONSOLIDATED EDISON CO. of NEW YORK, INC.; THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK; ALFRED E. KAHN, individually and in his capacity as Chairman of the Public Service Commission of the State of New York; and EDWARD P. LARKIN, CARMEL CARRINGTON MARR, HAROLD A. JERRY, JR., and EDWARD BERLIN, each individually and in his capacity as Commissioner of the Public Service Commission of the State of New York, CONNIE ROHAN, as agent of the Public Service Commission,

DEFENDANTS.

-----xCIVIL ACTION

:NO. 76-6583

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:
:
:COMPLAINT
:CLASS ACTION

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PRELIMINARY STATEMENT

1. This is a class action for declaratory and injunctive relief pursuant to 42 USC 1983, 28 USC §§2201, 2202, and Rules 23, 57 and 65 of the Federal Rules of Civil Procedure, to protect certain rights, privileges and immunities secured by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

2. By this proceeding plaintiff seeks judgment declaring unconstitutional as violative of the requirements of due process and equal protection /§15 of the New York Transportation Corporations Law, Title 16: Parts 11 and 143 of the New York State Code of Rules and Regulations, and the Con Edison Tariffs, as applied to plaintiff and her class, insofar as they authorize an electric corporation

to discontinue the supply of electricity to the premises of a consumer for alleged tampering and/or nonpayment of a charge and increased deposit for said tampering, without first affording the consumer adequate notice and a prior opportunity to be heard on the central issues of the alleged tampering, her liability for the tampering and the reasonableness of the charge or deposit.

3. By this proceeding plaintiff, on behalf of herself and all other similarly situated, seeks a preliminary and permanent injunction restraining the enforcement and operation of §15 of the Transportation Corporations Law, and Title 16: Parts 11 and 143 of the New York State Rules and Regulations and the Con Edison Tariffs, in their application to plaintiff and her class, insofar as they authorize the summary discontinuance of electricity to the premises of a consumer without first affording constitutionally adequate notice and hearing on disputed underlying issues of fact.

4. By this proceeding plaintiff, on behalf of herself and all others similarly situated seeks a judgment declaring that the imposition of charges and increased deposit for tampering with a meter and the subsequent shut-off of electricity when said charges and deposit are not paid is in fact and in law a "discontinuance of service for nonpayment of bills rendered for service or for failure to post a required deposit"; and as such requires the full safeguards provided in Title 16 New York Code of Rules and Regulations, Parts 11 and 143, and the Con Edison Tariffs, including a hearing on the customer's

responsibility for said tampering.

5. By this proceeding plaintiff on behalf of herself and all others similarly situated seeks a preliminary and permanent injunction restraining defendants from treating cases of alleged tampering with a meter, the imposition of charges and increased deposit therefore and the subsequent shut-off of electricity when said charges and deposit are not paid, as different from a "discontinuance of service for nonpayment of bills rendered for service or for failure to post a required deposit"; restraining and enjoining defendants from failing to provide the safeguards provided in Title 16 New York Code of Rules and Regulations Parts 11 and 143, and the Con Edison Tariffs to said tampering cases including the necessity for a hearing on the customer's responsibility for said tampering.

5a. By this proceeding plaintiff seeks ^{compensatory and punitive} damages in the amount of \$5,000 for the pain, suffering and mental anguish caused through the deprivation of electric service to herself and her family, and additional damages in the amount of \$200 per day for each additional day defendants withhold electric service.

6. By this proceeding plaintiff VANESSA TAYLOR seeks, on her own behalf, a temporary restraining order prohibiting and restraining the defendant CONSOLIDATED EDISON CO. of NEW YORK INC. (hereinafter Con Edison), and its agents, servants and employees, from withholding of electric service to her premises, and restraining defendant Con Edison from discontinuing or threatening to discontinue her service, pending the determination

of a motion for preliminary injunction and recognition of a class.

VENUE

7. This proceeding is instituted in the U. S. District Court for the Eastern District of New York pursuant to 28 USC §1391(b) as the judicial district in which the claim arose.

JURISDICTION

8. Jurisdiction is conferred on this court by 28 USC §1343(3) as an action to redress the deprivation, under color of state law, of rights, privileges and immunities secured by the Constitution of the United States.

9. Jurisdiction is conferred on this court by 28 USC §1331(a) as an action arising under the Constitution and Laws of the United States.

10. The matter in controversy (deprivation of electric service without due process of law) exceeds the value of \$10,000.

CLASS ACTION ALLEGATIONS

11. Plaintiff brings this action as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

12. The class is composed of all persons whose electric service to their residences has been threatened with involuntary discontinuance by the defendant Con Edison for alleged tampering with a meter or nonpayment of charges and deposits imposed therefore, and all persons whose residential electric service has in fact been involuntarily discontinued by defendant Con Edison for such alleged tampering with a meter or nonpayment of charges and deposits imposed therefore.

13. The class is so numerous that joinder is impracticable. Rule 23(a)(1). Upon information and belief, the total number of defendant Con Edison's residential electricity customers is 2,469,300. Of these, on information and belief, a substantial number have received involuntary notices of discontinuance of service within the past year or have in fact been cut off involuntarily, the exact number of which plaintiff cannot state but is information possessed by or available to the defendants.

14. There are questions of law and fact common to the class; that is, whether each of the members of the class has been threatened with or has in fact suffered discontinuance of electric service without adequate notice and an prior opportunity to be heard on underlying questions of fact, and whether the denial of such an opportunity comports with the minimal requirements of procedural due process under the Constitution of the United States. Rule 23(a)(2).

15. Plaintiff's claims are typical of the claims of the class. Rule 23(a)(3).

16. Plaintiff's attorneys have legal resources and experience adequate to protect all members of the class, and the plaintiff knows of no conflict of interest among members of the class. Accordingly, the plaintiff will fairly and adequately protect the interests of the class. Rule 23(a)(4)

17. In failing to afford to plaintiff and her class procedural safeguards comporting with minimal due process prior to discontinuance of their service, defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive and corresponding declaratory relief with respect to the class as a whole. Rule 23(b)(2).

DEFENDANTS

18. Upon information and belief, defendant Con Edison is a public utility corporation incorporated under the laws of the State of New York and doing business in New York City and surrounding counties, with its corporate headquarters at 4 Irving Place, New York, New York.

19. Defendants CHARLES F. LUCE and ARTHUR HAUSPURG, are Chairman of the Board and President of Con Edison, respectively, and as chief corporation officers are responsible for the actions of Con Edison.

20. Defendant Con Edison is a "transportation corporation" within the meaning of the New York Transportation Corporations Law, and is an "electric corporation" within the meaning of New York Public Service Law. As such, and incidental to the public service with which it is charged, it is invested with all the powers, rights and duties prescribed therein, including the obligation to supply electricity and the power to discontinue electric service which is prescribed by §15 of the Transportation Corporations Law, and New York Code of Rules and Regulations.

21. Pursuant to applicable state law, Con Edison has been approved and enfranchised by the defendant Public Service Commission to supply electricity in New York City and surrounding areas. Con Edison supplies electricity to all five boroughs of New York and to Westchester County.

22. The defendants PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK and its Chairman and Members (hereinafter Public

Service Commission), have jurisdiction and supervisory power over the manufacture, sales and distribution of electricity for light, heat and power, and over the policies and practices of defendant Con Edison as an "electric corporation."

23. The defendant Public Service Commission has approved tariff regulations of defendant Con Edison authorizing the discontinuance of electric service in a manner as may be permitted by law for failure to comply with any applicable rules, regulations, law or order of the Public Service Commission or other authority for failure to pay a bill or post a deposit.

PLAINTIFF

24. Plaintiff VANESSA TAYLOR lives at 273 Gordon Street, Staten Island, New York, in an apartment with her infant child.

25. Ms. Taylor's sole income consists of a grant from the Department of Social Services in the amount of \$52 each two weeks plus \$91.50 each two weeks for rent. She has no savings, no bank account, and no stocks, bonds, real property or valuable personal property of any kind.

26. The building in which Ms. Taylor resides has two residences. She moved into her apartment on or about December 1975 and opened an account in her name with the defendant Con Edison to supply electricity on or about December 16, 1975. Her account number is 71-0252-2100-00046. The meter for her electricity is located outside her building in an area open to the public and heavily trafficked by

neighborhood children.

27. Ms. Taylor received electric bills for the first two months of her service in the approximate amounts of \$4 and \$3 respectively.

28. On or about Friday, March 12, 1975, Ms. Taylor's electric service was turned off by Con Edison.

29. On or about Saturday March 13, 1975 Ms. Taylor called the Emergency Service number for Con Edison. The service was restored and Ms. Taylor was told to call back on Monday, March 15, 1976.

30. On Monday, March 15, 1976, Ms. Taylor called Con Edison and was told her discontinuance of service was a mistake.

31. On Monday, March 15, 1976 at approximately 1:30 pm Ms. Taylor's electric service was discontinued and a steel plate put on her meter.

32. On or about March 26, 1976 Ms. Taylor again called Con Edison, she was now told that they had found evidence of tampering with her meter. Therefore, in order to have service restored, she would have to pay a \$100 charge plus a \$100 deposit.

33. On Tuesday, March 27, 1976, Ms. Taylor called the Public Service Commission to complain and ask to have her service restored. Later on March 27, 1976 the Public Service Commission called back and told Ms. Taylor they denied her request to have service restored and she would have to pay Con Edison the \$200 charge and deposit.

34. On Thursday, March 18, 1976, David Goldfarb, Esq., The Legal Aid Society, called Con Edison on behalf of Ms. Taylor and was told: That on March 11, 1976 Con Edison had inspected the meter and found it jammed with matches; that in cases where meters are tampered with, even though they are outside the buildings, there is a presumption that the customer did the tampering; that in such cases an arbitrary charge is rendered and an increased deposit is required; that the \$100 charge is for unmetered service and that after service for those months can be estimated the remainder of the \$100 will be credited to the customer. That the \$100 deposit is based on the presumption that the customer stole electricity and that when the bills again reach 2/3rds of that deposit the electricity will be turned off again; that there was no hearing process for any of the above.

35. On Thursday, March 18, 1976, David Goldfarb, Esq., The Legal Aid Society, called the Public Service Commission and spoke with Ms. Connie Rohan. He was told that Public Service Commission had investigated the complaint by calling Con Edison; that where tampering is alleged, the case becomes an exception to all the rules; that Con Edison does not have to give any notice of shut-off, nor is there any hearing process; that Con Edison can prove that the meter was operating when service was turned on in December 1975 and that tampering had occurred while Ms. Taylor was a customer; and that was sufficient for a shut-off and/or requiring additional charges and deposits.

36. That on Friday, March 19, 1976, David Goldfarb, Esq., The Legal Aid Society, went to the offices of the Public Service Commission and spoke with Connie Rohan. He was told that under the Con Edison Tariff the customer is responsible for the safekeeping of the meter and that the company may withhold and discontinue service "in such manner as may be permitted by law" if the customer violates any rules or regulations; furthermore, that the New York State Transportation Corporations Law §15 and the New York State Rules and Regulations on hearings do not apply since this is not a nonpayment case, but a case of tampering.

37. Ms. Taylor is at the present time without electric service in that she is unable to pay the \$100 charge and \$100 deposit required.

38. The shut-off of Ms. Taylor's electricity poses a serious hazard to her health and well-being and the health and well-being of her infant child. Their electric supply, is vital not only for their convenience and comfort, but for their very life and health. Ms. Taylor cannot afford to move and she has no means to easily adapt to or adjust to such hardship.

39. The defendant Con Edison is the only supplier of electricity in the area in which Ms. Taylor resides, and she cannot go elsewhere to obtain such service.

40. The defendant Con Edison's conduct in shutting off her vital utility services has caused Ms. Taylor substantial uncertainty, worry and distress, as well as great expense and hardship. Unless actual withholding of electricity and discontinuance is enjoined preliminarily and permanently, she is in

danger of being subjected to the irreparable harm that such a loss of service occasions.

STATEMENT OF CLAIMS

41. The defendants have, under color of New York statutes, ordinances, regulations, customs and usage, subjected plaintiff to a deprivation of rights, privileges, and immunities secured by the United States Constitution and Law.

42. The defendant Con Edison is subject, under state law and regulations, to the general supervisory power of the defendant Public Service Commission. Its franchise and incorporation are approved by the Commission. Its rates are approved by the Commission. It is subject to inspection by the Commission of its meters and equipment, and of its methods of service and the quality thereof. The Commission must approve its issues of stock, bonds, proposed mergers, reorganizations, and transfer or lease of franchise. It must obtain the Commission's certificate of approval for condemnations. Its methods of recordkeeping and accounting practices must be approved by the Commission. Reports of accidents and interruptions of service must be made to the Commission. Customer deposit policies and practices are subject to the approval and scrutiny of the Commission. The Commission is invested by statute with the power to sue defendant for misconduct in a special proceeding. The rules and regulations of the utility are required to be filed with the Commission as a condition of operation, and must have been approved to be effective. Its actions are subject to the review of the Commission. Accordingly, the defendant Con Edison is

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subject to the close and continuing regulation of a statutorily created body.

43. The Tariffs under which Con Edison operates provide in part:

III General Information

* * *

II. Metering and billing....

(c) Access to premises. Except as provided in General Rule III-8(c), "Seals" the customer shall not permit access by anyone, except authorized employees of the company, to the meters, equipment or any other property of the company and shall not interfere or permit interference with the same; and the customer shall be responsible for their safekeeping on his premises.

* * *

15. ...The company reserves the right to withhold service or to discontinue service or to discontinue service or terminate any agreement therefore in such manner as may be permitted by law under the circumstances....

(b) if the customer refuses or fails to comply with any applicable rules, regulation, term or condition of his rate schedule, or with any applicable law or order of the PSC or other authorities having jurisdiction... or

(c) if the customer defaults in the payment of a bill rendered for service or fails to post a required deposit and the company has complied with:

(1) subdivision D Chapter II
Title 16 of the New York State
Code of Rules and Regulations

(2) Section 116 of the Public
Service Law

(3)

(Emphasis Added).

44. Not only do the Tariffs provide that service can be discontinued "in such manner as may be permitted by law." but the New York State Code of Rules and Regulations require at Title 16 §143.1 that Notice of Discontinuance for nonpayment of bills rendered for service or for failure to post a required deposit, shall be given five days in advance, and at §143.2 that "every notice indicating discontinuance of service" shall conform to certain standards. Power to waive these regulations because they impose an unreasonable burden on the company is given to the Public Service Commission.

45. Pursuant to New York State Code of Rules and Regulations, Title 16, §§11.1 and 11.2, the Public Service Commission investigates, hears and determines all complaints. They also have the power to preclude discontinuance of service during the investigation of the complaint.

46. New York Transportation Corporation Law at §§12 and 15 state that electricity must be provided and specifies when such corporation may discontinue electricity. It specifically empowers officers, agents or workmen of such corporation to enter into the premises at certain hours and separate and carry away meters and other property, and disconnect any meter, etc., whether property of the corporation or not.

47. The defendant Con Edison has construed the state laws, regulation, and its tariffs in such a way that in the case of alleged tampering with a meter it can under the law enter private property and disconnect a meter without any notice whatsoever.

48. The defendant Public Service Commission has approved

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of the above procedure, has waived any necessity for Con Edison to comply with the law or regulations regarding nonpayment (even though Con Edison has rendered a bill and deposit requirement), and has refused to investigate the complaint on the grounds that tampering with a meter raises the irrebuttable presumption that the customer has stolen service and therefore no hearing is necessary.

49. The continuous and uninterrupted supply of electricity to plaintiff's residence is a property right and entitlement secured to her by the Fourteenth Amendment to the Constitution of the United States, the discontinuance of which would result in extreme hardship and constitute a danger to her very life and health.

50. The Due Process Clause of the Fourteenth Amendment guarantees to the plaintiff and her class that no state shall deprive them of life, liberty or property without due process of law. Minimal due process requires that a person, before he can be deprived of property or services to which he is entitled must be afforded reasonable notice and an opportunity to be heard on the merits of the claim.

51. Due process requires that the pretermination hearing be suitably adapted to the particular circumstances of the case and that it afford the recipient a reasonable opportunity to present evidence at a meaningful time and in a meaningful manner.

52. The statutory and regulatory scheme authorizing the defendant Con Edison to discontinue electric service to plaintiff and her class does not provide any notice or any opportunity for hearing on the disputed factual questions, let

alone one at a reasonable time (prior to termination) and in a reasonable manner (tailored to the capacities and circumstances of those who are to be heard), unless the case is treated under the regulations as a "nonpayment" case.

53. As applied to the facts and circumstances of the present case, minimal due process requires that the following notice and hearing procedures be available to plaintiff and her class prior to termination of electric service:

(a) A subscriber should be given notice, served in a manner reasonably calculated to reach him, that the company has found tampering with a meter rendering improper billing. The notice must apprise the customer of additional charges being imposed and their method of calculation, and any additional deposit being imposed. The notice must apprise the customer of the evidence against him and the basis for determining his liability for tampering with the meter. The notice must fully apprise the subscriber of the hearing procedures he may follow to contest the charge prior to cut-off, and the time limit within which he must act. It must apprise him of his right to counsel.

(b) The customer must be given an opportunity to rebutt the allegation that he is responsible for tampering with the meter. The company must by a preponderance of the evidence prove the customer's responsibility.

(c) The hearing examiner must be impartial; he must not be one who has participated in making the determination under review.

(d) The hearing examiner should issue a written decision setting forth his findings of fact resting solely on the

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evidence adduced, and stating the reasons for his determination and the evidence relied on.

(e) The subscriber should be advised of the procedures that must be followed if he wishes to seek review of the determination, whether that review be administrative or judicial.

54. Plaintiff has no adequate remedy at law to redress the deprivation of her constitutional right to procedural due process. Upon information and belief, there exists no administrative procedure, either within the corporate structure of defendant Con Edison, or within the defendant Public Service Commission, whereby plaintiff or members of her class can obtain a prior hearing on disputed questions of fact underlying the alleged tampering with a meter and the charges and deposits rendered therefore, that comports with the minimal requirements of procedural due process as set forth herein, unless defendants treat the case as a "nonpayment" case.

RELIEF REQUESTED

WHEREFORE, plaintiff respectfully prays that the court:

1. Assume jurisdiction of this cause and set it down promptly for a hearing on plaintiff's request for preliminary injunction and recognition of a class;
2. Pending a hearing on plaintiff's motion, grant a temporary restraining order, pursuant to Rule 62 of the Federal Rules of Civil Procedure, restraining defendant Con Edison from withholding electric service to plaintiff VANESSA TAYLOR'S residence;
3. Determine by order, pursuant to Rule 23(c)(1) of the

Federal Rules of Civil Procedure, that this action be maintained as a class action;

4. Grant preliminary and permanent injunctions pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining defendant Con Edison from terminating electric service to any residence of members of plaintiff's class unless they are afforded prior notice and opportunity to be heard according to minimal requirements of procedural due process;

5. Pursuant to 28 USC §§2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure, declare that §15 of the New York Transportation Corporations Law, Title 16 Parts 11 and 143 of the New York Code of Rules and Regulations, and the Con Edison Tariffs, as applied, and defendants' acts performed by authority thereof, are violative of the Due Process Clause of the Fourteenth Amendment to the United States Constitution;


6. Declare that terminating electric service to any residence of members of the plaintiff's class is in fact and law a discontinuance of service for nonpayment of bill tendered for service or for failure to post a required deposit and as such requires the full safeguards of laws, regulations and tariffs applying to such;

7. Grant plaintiff damages in the amount of \$5,000 plus \$200 per day for each additional day electric service is withheld.

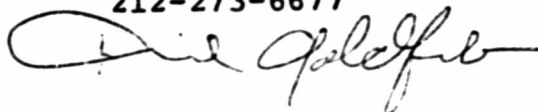
8. Pursuant to Rule 54(d) of the Federal Rules of Civil Procedure, allow the plaintiff her costs herein, and grant her such other and further relief as to this court may seem just and equitable.

Dated: Richmond, New York
March 24, 1976

YOURS &c.
KALMAN FINKEL, ESQ.
THE LEGAL AID SOCIETY
CIVIL DIVISION


JOAN MANGONES, ESQ.
ATTORNEY-IN-CHARGE
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212-273-6677

DAVID GOLDFARB,
OF COUNSEL



VANESSA TAYLOR, on behalf of herself and all
other persons similarly situated,

- against -

DEFENDANTS .

RICHARD N. ARCARI, being duly sworn deposes

I am the Director of Central Commercial Services
Validated Edison Company of New York, Inc.. ("Con
r the "Company"), a defendant in this action.
is at the Con Edison main office building at
Place, New York, NY 10003. I have been employed

by Con Edison for twenty years. As part of my job, I am responsible for the development of policies and procedures to combat meter tampering and theft of service on Con Edison's system.

I have read the affidavits of Herbert Warne, Richard Rogers, Richard Paul, Frank McEnery, Vernon Burgess and Joseph Butler in this matter relating to the tampered meters at the premises of the individual plaintiff Vanessa Taylor, 273 Gordon Street, Staten Island, and I am otherwise familiar with the facts and circumstances involved in the disconnection and reconnection of service to her apartment.

273 Gordon Street is a two-family residence. The first-floor apartment is occupied by Vanessa Taylor and the second-floor apartment is occupied by Robert Taylor who, on information and belief, is Vanessa Taylor's father. Vanessa Taylor became a Con Edison customer of record as of December 16, 1975. In the two months following that date her electric meter showed no consumption of electricity and she was billed the minimum amount provided for in the Company's Schedule for Electricity Service, P.S.C. No. 8 - Electricity (the "tariff" or "rate schedule") which was in the order of \$3.50 to \$4.00 each month. The pre-

vious occupant of the same apartment was billed for electric service in a fourteen-month period in amounts ranging between \$12.23 and \$30.62 per month, with ten of the bills being in excess of \$19 per month. The rates and charges under which electric service is rendered to residential customers including individual plaintiff Vanessa Taylor have since been increased.

Prior to moving to 273 Gordon Street, Vanessa Taylor was a customer of Con Edison at 95 Lafayette Avenue in Staten Island, where she occupied an apartment in a two-family house. Her monthly bills for electricity at that address ranged between \$21.31 and \$45.61 with the bulk of the bills being over \$30 per month. She left that address owing the Company \$221.24 for electric service. This bill was paid by the Department of Social Services on December 22, 1975.

On March 11, 1976 evidence of meter tampering was found in the meters serving both apartments at 273 Gordon Street. The seals on both meters had been broken. These seals are placed on meters by the Company to prevent tampering. The meter cannot be opened without breaking the seal. Both meters had been tampered with and could not record any use of electricity, although electric current

flowed through the meters into the customers' apartments. When the material used for the tampering, which turned out to be pieces of matchbooks, was removed from the meters both operated normally. The meter serving the upstairs apartment was then disconnected as there was no customer of record listed for the apartment.

The meter serving the downstairs apartment of individual plaintiff Vanessa Taylor was not disconnected by our employee. Instead, he checked the apartment first and finding no one home, left a notice with a telephone number which stated that there was evidence of tampering and asked that the customer contact the Company immediately. A copy of the form of the notice is attached to the affidavit of Richard Paul.

About 24 hours later, on March 12, 1976 not having heard from the customer, the meter serving Vanessa Taylor's apartment was disconnected resulting in a discontinuance of service to the apartment.

On Saturday, March 13, 1976, in response to an emergency call, our emergency forces restored service to Vanessa Taylor's apartment, unaware that the meter had been disconnected because of the tampering condition and

the customer's failure to respond to the Company's notice. On March 15, 1976, the Company discovered that her apartment had been erroneously reconnected and service was again discontinued. On March 23, 1976, the Company voluntarily restored service in response to a request from a New York Public Service Commission Staff person. The next day a foreman and another employee inspected the meter and saw that current was flowing through it to the customer. Service to the premises has been continuous since March 23, 1976.

The Company's procedure in cases where the meter of a residential customer is discovered to have been tampered with is to contact the customer immediately, point out the tampered condition and advise the customer to visit the District Office as soon as possible but not later than the following business day. If the customer cannot be contacted, a written notice of the type left for plaintiff and shown in the attachment to the affidavit of Richard Paul is left at the premises advising the customer to visit the District Office.

If the customer fails to appear at the District Office or to contact the Company to make acceptable ar-

rangements, the service is discontinued and the customer is notified of the action taken at the time of discontinuance. If the customer is not at home, a notice of discontinuance is left at the premises stating that the service was discontinued because the customer had not responded to the notice previously left. A telephone number is given for the customer to call to make arrangements to pay for the unmetered service and to restore service.

An investigation is made prior to service disconnection to determine if life sustaining equipment is in use in the building or if any occupant, because of serious illness or injury, would be adversely affected by the lack of service. Such cases are referred to the Division Vice President for resolution.

In cases of repetitive theft by the same customer at the same location, service is terminated promptly. The customer is advised of the discontinuance of service and the reason. When tampering with service and meter equipment creates a hazardous condition, which could cause fire or harm to the occupants of the premises, the service to the premises is terminated. Questionable cases are referred to the Company's Property Protection management for resolution.

The calculation and billing of charges for unmetered service are based on the best available data. In addition to normal field surveillance of theft of service cases, a 90-day follow-up of the customer history record is made to determine if the estimated charges are correct or require adjustment.

Installment payment agreements are entered into with the customer when it would be an undue hardship on the customer to make immediate payment in full. When satisfactory arrangements are completed, service is restored as promptly as practicable.

Upon information and belief, plaintiff Vanessa Taylor has not yet reached her eighteenth birthday.

Upon information and belief the Department of Social Services pays utility bills for service for estimated usage in cases where meter tampering is discovered and the customer is a client of the Department.

Con Edison provides electricity service to some 2.8 million customers in New York City and Westchester County, of whom some 2.4 million are residential customers. Electricity provided by Con Edison is measured through meters on customer premises which meters are furnished by

the Company and remain the property of the Company at all times. Since the meters are within the control of the customer, the opportunity exists for tampering with the meters for the purpose of reducing the customer's payments for service.

Con Edison's tariff, P.S.C. No. 8 - Electricity, has been duly filed with the New York State Public Service Commission and includes the following provisions which are attached to Exhibit A, and which are or may be applicable in cases involving meter tampering:

a) General Rule III, 9(a) -- Adequacy and Safety of Installation -- provides in part that the Company reserves the right to discontinue service whenever the customers' installation is deemed by the Company to be unsafe, inadequate or unsuitable for receiving the Company's service.

b) General Rule III, 11(c) -- Access to Premises -- provides in part that a customer may not permit access to its meters by anyone except authorized employees of the Company, and may not interfere or permit interference with the same. An exception to this rule is found in General Rule III, 8(c) which permits access to the meter by a qualified electrician making wiring changes in accordance with Company specifications and with Company

permission. The customer is responsible for the safe-keeping of meters at his premises. The Company's duly authorized representatives have the right of access to the premises of the customer and to all of the Company's property thereon at all reasonable times for the purposes of reading and testing meters, removing its property or any other proper purpose.

c) General Rule III, 11(g) -- Bills Based Upon Estimated Use of Service -- provides in part that in cases where a meter fails to register the full usage of service by a customer, the Company may estimate such usage on the basis of available data and bill the customer accordingly.

d) General Rule III, 15 -- Discontinuance or Withholding of Service -- provides in part that the Company reserves the right to withhold service or to discontinue service or terminate any agreement therefor in such manner as may be permitted by law if the customer refuses or fails to comply with any applicable provision of the rate schedule, or if the customers' installation is deemed by the Company to be unsafe, inadequate or unsuitable for receiving the Company's service, or if the customer defaults in the payment of a bill and fails to post a deposit and the Company has complied with rules that may be ap-

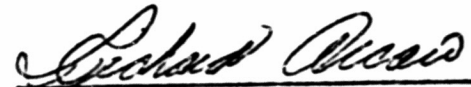
plicable for discontinuance of service in the case of nonpayment or failure to post a deposit.

The Company submitted a revised tariff to the Public Service Commission in PSC Case 255 including all of the aforementioned tariff provisions in connection with an application for a rate increase. One of the provisions, General Rule III, 15 was subsequently modified. The aforementioned provisions were not challenged by the Public Service Commission nor were they modified by the Commission. They were permitted to become effective in 1970 as filed. In 1973 General Rule III, 15 was modified by the addition of the provisions requiring the Company to follow prescribed procedures in the cases of discontinuance of service for nonpayment or failure to post a deposit.

I estimate that Con Edison is losing millions of dollars annually through theft of service by way of meter tampering. This loss is reflected in increased rates, which are borne by all customers on the system.

Con Edison charged off over \$52,000,000 in uncollectible bills in 1975. Of this amount, about \$31,000,000 was attributable to some 226,000 residential

customers. The cost of our uncollectible bills is borne by all other customers on the system.



Richard Arcari

Sworn to before me this
22nd day of April 1976.



ANGELA ROBERTI
Notary Public, State of New York
No. 41-0593313
Qualified in Queens County
Commission Expires March 30, 1978

GENERAL INFORMATION—Continued

**III. General Rules, Regulations, Terms and Conditions under Which
Electric Service Will Be Supplied, Applicable to and Made a Part
of All Agreements for Electric Service—Continued**

8. Service Equipment—Continued

In order to be billed for coincident maximum demand under the provisions of General Rule III-11(d) "Maximum Demand", the Customer shall furnish and install all necessary conduit and wiring between the watthour meters and associated metering devices for connection by the Company.

The Company will not supply service until the Customer's installation shall have fulfilled the Company's requirements and shall have been approved by the authorities having jurisdiction over the same. The final connection for making the service alive shall be made only by the Company.

- (c) **Seals:** The Company will seal all meters, meter equipment and other enclosures on the service side of the meter. No person, except a duly authorized employee of the Company, shall be permitted to break or replace a seal or to alter or change a meter or its connections or location; except that, when wiring changes are being made by the Customer following receipt of Company specifications as to service supply, a qualified electrician may break the meter seal and remove and remount a meter when authorized to do so by the Company.

9. Customer's Wiring and Equipment

- (a) **Adequacy and Safety of Installation:** The Company shall not be required to supply electric service until the Customer's installation shall have been approved by the authorities having jurisdiction over the same; and the Company further reserves the right to withhold its service, or discontinue its service, whenever such installation or part thereof is deemed by the Company to be unsafe, inadequate or unsuitable for receiving the Company's service, or to interfere with or impair the continuity or quality of the Company's service to the Customer or to others.
- (b) **Customer's Repairs:** All repairs to the Customer's installation and equipment shall be made by the Customer, and he shall maintain the installation and equipment in the condition required by the authorities having jurisdiction and by the Company.
- (c) **Carrier Current Equipment:** If a Customer uses his building wiring for a carrier current system for communication or signaling purposes, the Customer shall install suitable filter equipment or make other provisions approved by the Company to keep the Company's distribution facilities free from carrier currents produced by his equipment.
- (d) **Motors and Miscellaneous Apparatus:** Before installing motors or miscellaneous apparatus, the Customer shall consult the Company regarding the characteristics of the service to be supplied and the manner in which the equipment may be connected. It is important that the characteristics of motors, motor starting equipment and miscellaneous apparatus, such as welders and X-rays, particularly in the matter of inrush currents, shall be such as not to impair the quality of service rendered by the Company to any of its Customers.

Considerable latitude in the amount of inrush current is permissible under certain conditions and the Company will give a written expression of opinion to any Customer as to the acceptability of his proposed installation in this respect. The Company, however, shall not be understood at any time as giving any assurance or warranty, expressed or implied, that particular conditions may not later require change, unless inrush currents are within limits specified by the Company as acceptable in any case.

For welders, X-rays and other inherently single phase apparatus requiring inrush current in excess of the values allowed by the Company, the Customer shall provide rotating equipment for converting from three phase to single phase, or other equipment such as capacitors, to reduce inrush current to a value acceptable to the Company.

If miscellaneous appliances, such as furnaces, heaters and ranges, having 120 volt elements are supplied from 3 or 4 wire services, the elements should be so connected between the line wires and neutral that the operating current unbalance will be a minimum.

(General Information—Continued on Leaf No. 15)

Date of Issue: August 18, 1970 Effective September 8, 1970, under authority of Public Service Commission, State of New York, Special Permission Order No. EL-1417, dated September 1, 1970. Date Effective: September 17, 1970

Issued by **W. J. MURPHY, Assistant Vice President**
4 Irving Place, New York, N. Y. 10003

GENERAL INFORMATION—Continued

**III. General Rules, Regulations, Terms and Conditions under Which
Electric Service Will Be Supplied, Applicable to and Made a Part
of All Agreements for Electric Service—Continued**

10. Changes in Customer's Requirements

The capacity of the Company's facilities supplying service to an individual Customer is designed to provide adequate service to the installation existing at the time service was connected so that any material increase in load may result in poor quality of service, interruption of service or damage to the Company's facilities. The Customer shall give the Company reasonable advance notice of intention materially to increase his load so that adequate facilities may be provided.

When there is a change in the Customer's requirements for electric service or a change by the Customer from one Service Classification to another, or when the Customer includes in his requirements any service theretofore supplied to him or to others under another agreement or agreements for service, the Customer shall make such changes and alterations in the wiring, meter equipment and appurtenances and other parts of the Customer's installation as may be necessary to enable the Company to furnish safe and adequate service and to measure the electric service thereafter to be supplied through the meter or meters installed in accordance with General Rule III-8(a) "Company's Installation". Such changes and alterations shall be governed by the requirements applying to new installations.

11. Metering and Billing

(a) **Measurement of Electric Service:** Bills will be based upon the registration of the Company's meters except as otherwise provided in this Rate Schedule. All service shall be measured according to the characteristics of the service supplied by the Company.

(b) **Testing of Meters:** At such times as the Company may deem proper, or as the Public Service Commission may require, the Company will test its meters and measuring devices in accordance with the standards and bases prescribed by the Public Service Commission.

(c) **Access to Premises:** Except as provided in General Rule III-8(c) "Seals", the Customer shall not permit access by anyone, except authorized employees of the Company, to the meters, equipment or any other property of the Company, and shall not interfere or permit interference with the same; and the Customer shall be responsible for their safe keeping on his premises. The Company's duly authorized representatives shall have the right of access to the premises of the Customer and to all of the Company's property thereon at all reasonable times for the purposes of reading and testing meters, inspecting equipment used in connection with its service, metering the demand, ascertaining and counting the connected load of the Customer's installation, removing its property, or any other proper purpose.

(d) **Maximum Demand:** The maximum demand when determined by a demand meter shall be the highest 30 minute integrated demand occurring during the billing period in which such use is made. The integrated demand is the average of the kilowatt use occurring in a 30 minute period, which average, if used continuously for 30 minutes, would produce the kilowatthours actually consumed during such period.

A Customer, entitled under the provisions of this Rate Schedule to have maximum demands added for billing purposes, may be billed for coincident maximum demand, provided that he furnishes and installs all necessary conduit and wiring between the watthour meters and associated metering devices for connection by the Company, and further provided that no watthour meter will be connected with any other watthour meter or watthour meters for the measurement of coincident demand unless its rated capacity is 1% or more of the rated capacity of each other watthour meter to be so connected.

Whenever electric service is supplied through two or more watthour meters under a single agreement the Company may compute the maximum demand, in lieu of installing a demand measuring device, for any watthour meter which has not registered more than 360 kilowatthours per month in 2 consecutive months during the preceding 12 months, on the basis of 0.1 kilowatt for each 18 kilowatthours of registered consumption during a monthly billing period.

The Company reserves the right to meter the demand of any Customer.

(General Information—Continued on Leaf No. 16)

GENERAL INFORMATION—Continued

**III. General Rules, Regulations, Terms and Conditions under Which
Electric Service Will Be Supplied, Applicable to and Made a Part
of All Agreements for Electric Service—Continued**

11. Metering and Billing—Continued

- (e) **Meter Reading and Billing Period:** Thirty days is considered a month for billing purposes. Unless otherwise specified in this Rate Schedule, rates and charges are stated on a monthly basis. In the ordinary course of business, meters are scheduled by the Company to be read and bills are rendered monthly (approximately 30 days) or bi-monthly (approximately 60 days). The Company prepares such schedules in advance. Where meters are scheduled to be read bi-monthly, the Company may render an interim, averaged bill for the first month (approximately 30 days) of the bi-monthly period.

Where demand meters are installed for billing purposes the Company will schedule meter readings monthly.

The Company reserves the right to read meters and render bills at any other interval of time.

- (f) **Proration of Monthly Rates and Charges:** Where the Company renders a bill for other than a 30 day period, the rates and charges will be prorated on the basis of the number of elapsed days divided by 30; except that a Customer who terminates service less than 30 days after the commencement of service, will be billed for a month.

- (g) **Bills Based upon Estimated Usage of Service:** In case any meter or measuring device used under an agreement for service for any reason fails to register for any period of time the full usage of service by a Customer, or if the actual usage of service cannot be obtained because of inability of the Company to read a meter or measuring device, the usage of service by such Customer may be estimated by the Company on the basis of available data and the Customer billed accordingly.

Where the Customer's only utilization equipment consists of warning lights, electric signs or the like, having a total rated capacity of less than 10 kw and an estimated use of less than 3,000 kwhr per month and such equipment has a definitely determinable demand, and is operated on a fixed schedule, the Company may supply unmetered service at the applicable Service Classification rates and charges, upon the basis of the usage determined by the Company and endorsed upon the agreement for service. Unmetered service will not be supplied at any location where the Customer is supplied with metered service. The Company reserves the right at any time to meter service previously supplied on an unmetered basis.

- (h) **Plural Meters—Billing of Charges:** When, upon the request of the Customer, more than one meter is installed to measure the service of a single Customer at a single location, or where electric service supplied through excess distribution facilities is separately metered from other electric service supplied to the Customer, the service rendered through each meter, so installed, will be computed separately and billed in accordance with the applicable Service Classification. In such case, only the number of kw of the Customer's maximum demand specified under Service Classification No. 12 and registered by such meters, will be included in the energy charge under Service Classification No. 12. Where more than one meter is installed by the Company to measure the service of a single Customer at a single location, under the conditions or circumstances set forth in the numbered sub-paragraphs of General Rule III-8(a) "Company's Installation", the amount of energy registered

(General Information—Continued on Leaf No. 17)

Date of Issue: October 15, 1970

Date Effective: December 1, 1970

Issued by W. J. MURPHY, Assistant Vice President
4 Irving Place, New York, N. Y. 10003

GENERAL INFORMATION—Continued

**III. General Rules, Regulations, Terms and Conditions under Which
Electric Service Will Be Supplied, Applicable to and Made a Part
of All Agreements for Electric Service—Continued**

- (c) **Company Equipment and Use of Service:** The Company will not be liable for any injury, casualty or damage resulting in any way from the supply or use of electricity or from the presence or operation of the Company's structures, equipment, wires, pipes, appliances or devices on the Customer's premises, except injuries or damages resulting from the negligence of the Company.
- (d) **Selection of Service Classification:** The Company will endeavor to assist a Customer in the selection of the Service Classification which may be most favorable to his requirements, but in no way can the Company make any warranty, expressed or implied, as to the rates, classifications or provisions favorable to the future service requirements of the Customer.

15. Discontinuance or Withholding of Service

In addition to the provisions of the Service Classifications as to the term of their respective agreements for service, the Company reserves the right to withhold service or to discontinue service or terminate any agreement therefore, in such manner as may be permitted by law under the circumstances: (a) if the Customer at any time refuses or fails to make application and agreement for service as provided by this Rate Schedule, or (b) if the Customer refuses or fails to comply with any applicable provision, rule, regulation, term or condition of this Rate Schedule, or with any applicable law or order of the Public Service Commission or other authorities having jurisdiction, or if the Customer's installation or part thereof is deemed by the Company to be unsafe, inadequate or unsuitable for receiving the Company's service, or to interfere with or impair the continuity or quality of the Company's service to the Customer or to others, or (c) if the Customer defaults in the payment of a bill rendered for service or fails to post a required deposit, and the Company has complied with:

1. The procedures and form of notice required by Subchapter D, Chapter II, Title 16 of the New York Code of Rules and Regulations, Part 143, Rates and Charges, except to the extent, if any, that such requirements may be modified or waived by the Commission, or
2. The procedure and form of notice required by Section 116 of the Public Service Law, where service is to an entire multiple dwelling (as is defined in the Multiple Residence Law) provided, however, that when any of the notices required thereunder is mailed in a post-paid wrapper service will not be discontinued until at least eighteen days after the mailing of such notice.
3. A copy of the rules as they apply to the Company is available for inspection by its Customers at all District Offices.

(General Information—Continued on Leaf No. 20)

Date of Issue: July 18, 1973

Issued under authority of Opinion No. 73-20
and order of the Public Service Commission
dated July 10, 1973

Date Effective: July 20, 1973

Issued by JOHN V. THORNTON, Vice President
4 Irving Place, New York, N. Y. 10003

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

VANESSA TAYLOR, on behalf of herself and all
other persons similarly situated,

PLAINTIFFS,

- against -

CONSOLIDATED EDISON CO. of NEW YORK, INC.;
CHARLES F. LUCE, individually and in his capacity as Chairman of CONSOLIDATED EDISON CO. of NEW YORK, INC.; ARTHUR HAUSPURG, individually and in his capacity as President of CONSOLIDATED EDISON CO. of NEW YORK, INC.; THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK; ALFRED E. KAHN, individually and in his capacity as Chairman of the Public Service Commission of the State of New York; and EDWARD P. LARKIN, CARMEL CARRINGTON MARR, HAROLD A. JERRY, JR., and EDWARD BERLIN, each individually and in his capacity as Commissioner of the Public Service Commission of the State of New York, CONNIE ROHAN, as agent of the Public Service Commission,

DEFENDANTS.

STATE OF NEW YORK)
) ss.:
COUNTY OF RICHMOND)

HERBERT WARNE, being duly sworn, deposes and
says:

That I am employed by Consolidated Edison Company of New York, Inc. ("Con Edison" or the "Company") as a supervisor in its Meter Operations and Property Protection Departments, Staten Island Division. My duties include, among other things, assigning Company personnel to investi-

gate and report unusual meter conditions, correcting those conditions and effecting termination and reconnection of customers' utility service.

On Thursday, March 11, 1976 I dispatched Richard Rogers, a Con Edison Customer Field Representative, to a number of job locations, including 273 Gordon Street, Staten Island, to ascertain and attempt to resolve various problems which the Company was experiencing with certain customer accounts. The specific problem at 273 Gordon Street for which Mr. Rogers was dispatched concerned the second floor electric account which Company records disclosed as having no customer of record with the Company but which, according to the meter registration, had been using electricity. Mr. Rogers was instructed to disconnect the meter until such time as a responsible party went on record with the Company.

After visiting the location, Mr. Rogers advised me that he had found a condition of tampering with the meter, which condition is more fully explained in his affidavit annexed hereto. Following Mr. Rogers report, I dispatched Property Protection Department personnel to more fully investigate the condition which he had reported.

These men consisted of a foreman, Frank McEnery, and two investigators, Verno Burgess and Richard Paul.

Upon their investigation that same day, Messrs. McEnery, Burgess and Paul found a condition of tampering not only on the second floor meter as reported by Mr. Rogers, but also on the meter intended to record electricity used in the first-floor apartment which Con Edison records disclosed was occupied by an active customer, Vanessa Taylor, the individual plaintiff herein. The affidavit of Mr. Paul, which is annexed hereto, more fully sets forth the tampering condition found and the steps taken to correct same, including the notice left for the occupant of the first floor of the premises advising that the Company be immediately contacted.

At approximately 3:30 p.m. on Thursday, March 11, 1976 I received a telephone call from a man who stated that he was the customer at 273 Gordon Street, that he had received the notice but knew nothing about any meter tampering. I informed him that, in accordance with our procedure, it would be necessary for him to pay a \$100 security deposit and an additional \$100 on account until a bill had been computed for the unmetered service. I further informed him that if these payments were not made by the afternoon of the following day (Friday, March 12, 1976)

service would be disconnected. He acknowledged this information and hung up.

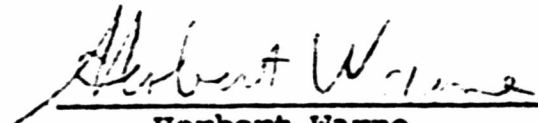
On March 12, 1976, an application for service to the second floor of 273 Gordon Street as a new customer was made at a district office of Con Edison. The applicant, a male, exhibited a lease for these premises effective March 1, 1976. As a result of this man's visit to the district office, he was placed on record as a new customer for the second floor under the name Robert Taylor.

At approximately noon on March 12th, I telephoned the district office and was advised that a new customer, Robert Taylor, had been placed on record for the second floor of these premises but that no one had paid the required monies for the first floor apartment. As a result, I dispatched Property Protection personnel to effect a service reconnection to the new customer on the second floor and to disconnect service to the first floor customer. This was completed on Friday afternoon, March 12, 1976.

On Saturday, March 13th, someone identified only as "Mrs. Taylor" contacted the Company's Emergency Bureau and complained of no electric service to her first floor

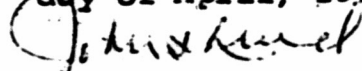
apartment at 273 Gordon Street. The Emergency Bureau, unaware of the condition of tampering, restored service late that afternoon. Subsequently, on Monday, March 15th, the service was again terminated since no payment had been made.

Thereafter, service to the first-floor apartment, occupied by Vanessa Taylor, was restored on March 23, 1976 and has remained on. The work was performed by Joseph Butler, a Customer Field Representative some time between 3:30 P.M. and 5:00 P.M.. On March 24th, I had this restoration of service verified by sending Frank McEnery and Vernon Burgess to the premises. Our normal procedure in a case like this would be to send one man out for the verification, but because the matter seemed to be assuming particular importance, I arranged to have McEnery, a foreman, accompany Mr. Burgess. They confirmed to me that they inspected the meter at about 3:40 P.M. on March 24th and found that the meter was connected and that electric power was flowing through the meter serving Vanessa Taylor's apartment.


Herbert Warne

Sworn to before me this

21 day of April, 1976.



JOHN F. LIND
Notary Public State of New York
No. 412555679
Qualified in Queens County
Commission Expires March 30, 1978

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clude, among other things, physically disconnecting utility meters where there is no customer of record, that is where the Company records do not identify a person who will be responsible for paying for the service furnished through the meter.

On the morning of March 1 , 1976, I was assigned by my supervisor, Herbert Warne, to visit premises 273 Gordon Street, Staten Island, New York, a location which Company records indicated was a private two-family residence. I was dispatched to this location because Company records showed no customer of record for the second floor of these premises yet recording of electric current was shown on the electric meter. I intended to turn off the meter since there was no responsible customer using the service.

I arrived at the premises at approximately 10:00 a.m. on March 11, 1976 and inspected the second floor meter, which was located on the outside of the house. I found what appeared to be pieces of paper inside the meter, resting on top of the disc and wedged against the meter casing, thereby preventing the disc from turning and causing the meter not to record the electricity consumed. I also noticed that the lead seal, which locks the meter and is used by

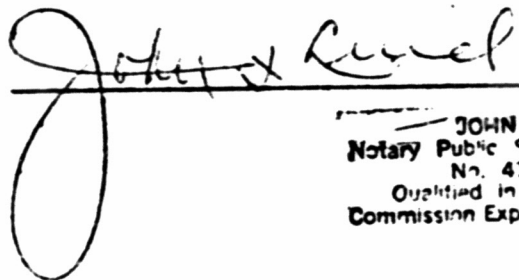
Con Edison to prevent tampering, was broken, permitting the meter to be opened.

Following my inspection, I disconnected the meter and left the premises. Thereafter, I called Mr. Warne, my supervisor and informed him of the condition I had observed.


Richard Rogers

Sworn to before me this

21 day of April, 1976.



JOHN F. LIND
Notary Public State of New York
No. 41-755679
Qualified in Orleans County
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
VANESSA TAYLOR, on behalf of herself and all
other persons similarly situated,

PLAINTIFFS,

- against -

CONSOLIDATED EDISON CO. of NEW YORK, INC.;
CHARLES F. LUCE, individually and in his capacity as Chairman of CONSOLIDATED EDISON CO. of NEW YORK, INC.; ARTHUR HAUSPURG, individually and in his capacity as President of CONSOLIDATED EDISON CO. of NEW YORK, INC.; THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK; ALFRED E. KAHN, individually and in his capacity as Chairman of the Public Service Commission of the State of New York; and EDWARD P. LARKIN, CARMEL CARRINGTON MARR, HAROLD A. JERRY, JR., and EDWARD BERLIN, each individually and in his capacity as Commissioner of the Public Service Commission of the State of New York, CONNIE ROHAN, as agent of the Public Service Commission,

DEFENDANTS.

-----x
STATE OF NEW YORK)
) ss.:
COUNTY OF RICHMOND)

RICHARD PAUL, being duly sworn, deposes and says:

That I am employed by Consolidated Edison Company of New York, Inc. ("Con Edison" or the "Company"), as an Investigating Inspector in its Property Protection Department, Staten Island Division. My duties as an Investigating Inspector include, among other things, investigating, verifying and correcting conditions of meter tampering as reported by other Company employees.

On March 11, 1976 I was assigned to visit premises 273 Gordon Street, Staten Island, New York, to investigate a report by Con Edison employee, Richard Rogers, of tampering with the electric meter for the second floor of these

premises. (See Rogers affidavit, annexed hereto.)

I arrived at the location at approximately 2:00 p.m. where I met with my foreman, Frank McEnery, and another employee of the Property Protection Department, Vernon Burgess.

Together we inspected the meter intended to provide service to the second floor apartment of this two-family residence. I found that the meter had been disconnected (see Rogers Affidavit) and, therefore, no electricity was being supplied to the second floor.

On my inspection of the meter, I found portions of a match book wedged between the meter disc and casing, preventing the disc from rotating and causing the meter not to record. I removed this foreign matter from the meter and reconnected the meter so that electricity again flowed through it to the second floor apartment. Following this correction the disc rotated and the meter recorded. However, since Company records reflected no active customer, I again physically turned off the meter.

While at this location I also inspected the only other electric meter on the premises, an electric meter supplying service to the first floor apartment of this building, which meter was adjacent to the second floor apartment meter and affixed to an outside wall of the residence. I found a condition with respect to this first floor meter similar to that of the second floor meter, namely the lead seal which locks the meter and is used by Con Edison to prevent tampering had been broken and pieces of a cardboard match book were wedged between the meter disc and casing, preventing the disc from rotating and causing

the meter not to record.

When I removed the foreign matter from this first floor meter, the disc immediately began to rotate and the meter started to record since, unlike the second floor meter, the meter serving the first floor apartment was not disconnected. After correcting the tampered condition I left the service connected because I had been given no direction to disconnect and, therefore, I assumed there was an active customer on record.

I then attempted to speak with any of the occupants who might be on the premises but found no one home. I, therefore, left a notice for the first floor occupants of the premises advising them to immediately communicate with the Company's Property Protection Department. A copy of the form of notice is attached.

Both meters at this location were then locked and I left the premises together with the other Company employees.

Richard Paul

Richard Paul

Sworn to before me this
21 day of April, 1976.

John F. Lind

JOHN F. LIND
Notary Public State of New York
No. 41755579
Qualified in Orange County
Commission Expires March 30, 1978



Consolidated Edison Company of New York, Inc.
1 Davis Avenue, Staten Island, N.Y. 10310

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DATE _____

ADDRESS _____

METER NO. _____

ACCOUNT NO. _____

An inspection of our meter equipment was made
and tampering was evident.

Please call our Property Protection Security
Department at 390-7263 between the hours of
8:30 A.M. to 5:00 P.M., Monday through Friday,
immediately after receipt of this notice.

Failure to call will be cause for disconnection
of service without further notification.

PP-5

47
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
VANESSA TAYLOR, on behalf of herself and all
other persons similarly situated,

PLAINTIFFS,

- against -

CONSOLIDATED EDISON CO. of NEW YORK, INC.;
CHARLES F. LUCE, individually and in his capacity as Chairman of CONSOLIDATED EDISON CO. of NEW YORK, INC.; ARTHUR HAUSPURG, individually and in his capacity as President of CONSOLIDATED EDISON CO. of NEW YORK, INC.; THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK; ALFRED E. KAHN, individually and in his capacity as Chairman of the Public Service Commission of the State of New York; and EDWARD P. LARKIN, CARMEL CARRINGTON MARR, HAROLD A. JERRY, JR., and EDWARD BERLIN, each individually and in his capacity as Commissioner of the Public Service Commission of the State of New York, CONNIE ROHAN, as agent of the Public Service Commission,

DEFENDANTS.
-----X

STATE OF NEW YORK)
) ss.:
COUNTY OF RICHMOND)

JOSEPH BUTLER, being duly sworn, deposes and says:

That I am employed by Consolidated Edison Company of New York, Inc. ("Con Edison" or "the Company") as a Customer Field Representative. My duties include connecting and disconnecting electric meters of Con Edison customers. I work in the Staten Island Division of the Company.

On March 23, 1976, I called the Con Edison office from the field at around 3:30 P.M. to receive any additional assignments. I was told to connect the meter for the first floor apartment at 273 Gordon Street, Staten Island. Sometime between 3:30 and 5:00 P.M., on that same day, I connected the meter for the first floor apartment at 273

Gordon Street, Staten Island. I called in to the same office at 5:00 P.M. to report that this connection had been made and that electric current was available to said apartment through the meter.

Joseph Butler
Joseph Butler

Sworn to before me this
21 day of April 1976.

John F. Tino
JOHN F. TINO
Notary Public State of New York
No. 417555679
Qualified in Queens County
Commission Expires March 30, 1978

49

-----x
VANESSA TAYLOR, on behalf of herself and all :
other persons similarly situated, :
:

PLAINTIFFS,

- against -

CONSOLIDATED EDISON CO. of NEW YORK, INC.;
CHARLES F. LUCE, individually and in his capacity as Chairman of CONSOLIDATED EDISON CO. of NEW YORK, INC.; ARTHUR HAUSPURG, individually and in his capacity as President of CONSOLIDATED EDISON CO. of NEW YORK, INC.; THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK; ALFRED E. KAHN, individually and in his capacity as Chairman of the Public Service Commission of the State of New York; and EDWARD P. LARKIN, CARMEL CARRINGTON MARR, HAROLD A. JERRY, JR., and EDWARD BERLIN, each individually and in his capacity as Commissioner of the Public Service Commission of the State of New York, CONNIE ROHAN, as agent of the Public Service Commission,

DEFENDANTS .

STATE OF NEW YORK)
) ss.:
COUNTY OF RICHMOND)

FRANK MCENERY, being duly sworn, deposes and

says:

I am employed by Consolidated Edison Company of New York, Inc., ("Con Edison" or the "Company") as a foreman in the Property Protection Department in the Company's Staten Island Division. My duties include supervising per-

sonnel who investigate, verify and correct conditions of meter tampering.

On the afternoon of March 24, 1976 I went with Vernon Burgess to 273 Gordon Street, Staten Island to verify that service to the first floor apartment was turned on. At about 3:40 P.M. I observed the meter and saw the disc inside the meter rotating. This disc rotates only when the meter is connected and current is flowing through it to the customer. It does not rotate when the meter is disconnected.

There are times when a meter may be connected and the disc will not rotate. This happens if there is no electricity being used on the premises. Even a refrigerator, which is normally plugged in to an electric outlet all the time will not use electricity during its off-cycle periods.

Frank McEnery
Frank McEnery

Sworn to before me this

21 day of April, 1976.

John F. Lind

JOHN F. LIND
Notary Public State of New York
No. 417544679
Qualified in Queens County
Commission Expires March 30, 1978

51

-----X
VANESSA TAYLOR, on behalf of herself and all :
other persons similarly situated, :

PLAINTIFFS, :

- against -

CONSOLIDATED EDISON CO. of NEW YORK, INC.;
CHARLES F. LUCE, individually and in his capacity as Chairman of CONSOLIDATED EDISON CO. of NEW YORK, INC.; ARTHUR HAUSPURG, individually and in his capacity as President of CONSOLIDATED EDISON CO. of NEW YORK, INC.; THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK; ALFRED E. KAHN, individually and in his capacity as Chairman of the Public Service Commission of the State of New York; and EDWARD P. LARKIN, CARMEL CARRINGTON MARR, HAROLD A. JERRY, JR., and EDWARD BERLIN, each individually and in his capacity as Commissioner of the Public Service Commission of the State of New York, CONNIE ROHAN, as agent of the Public Service Commission,

DEFENDANTS . _____

STATE OF NEW YORK)
) ss.:
COUNTY OF RICHMOND)

VERNON BURGESS, having been duly sworn deposes
and says:

I am employed by Consolidated Edison Company of New York, Inc. ("Con Edison" or the "Company") as a Special Investigator in its Property Protection Department, Staten Island Division. My duties include investigating,

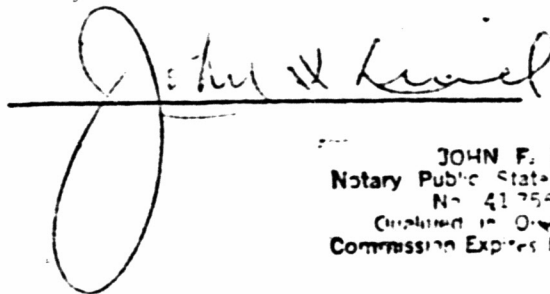
verifying and correcting conditions of meter tampering as reported by other Company employees.

On March 24, 1976 at about 3:40 P.M. I went with Frank McEnany, a Con Edison foreman, to 273 Gordon Street, Staten Island, to verify that service to the first floor apartment was turned on. I observed the meter and saw the disc inside the meter rotating. This disc rotates only when the meter is connected and current is flowing through it to the customer. It does not rotate when the meter is disconnected.


Vernon Burgess

Sworn to before me this

21 day of April, 1976.



JOHN F. LIND
Notary Public State of New York
No. 417545679
Qualified in Orange County
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

VANESSA TAYLOR, on behalf of herself and all
other persons similarly situated,

PLAINTIFFS,

- against -

CONSOLIDATED EDISON CO. of NEW YORK, INC.;
CHARLES F. LUCE, individually and in his capacity as Chairman of CONSOLIDATED EDISON CO. of NEW YORK, INC.; ARTHUR HAUSPURG, individually and in his capacity as President of CONSOLIDATED EDISON CO. of NEW YORK, INC.; THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK; ALFRED E. KAHN, individually and in his capacity as Chairman of the Public Service Commission of the State of New York; and EDWARD P. LARKIN, CARMEL CARRINGTON MARR, HAROLD A. JERRY, JR., and EDWARD BERLIN, each individually and in his capacity as Commissioner of the Public Service Commission of the State of New York, CONNIE ROHAN, as agent of the Public Service Commission,

DEFENDANTS.

-----xCIVIL ACTION

:NO.76 C 583

:

:NOTICE OF MOTION
FOR CLASS CERTI-
FICATION, SUMMARY
JUDGMENT, AND
PERMANENT
INJUNCTION

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SIR:

PLEASE TAKE NOTICE, that upon the annexed affidavits of VANESSA TAYLOR, sworn to March 26, 1976 and May 10, 1976, and DAVID GOLDFARB, sworn to March 24, 1976, and upon all the pleadings herein, together with the annexed statement pursuant to General Rule 9(g) of this court of material facts as to which there is no genuine issue to be tried, plaintiff's supporting brief and all the papers and proceedings had herein, the undersigned will move this court before the Honorable Walter Bruchhausen at Room 244 United States Courthouse 225 Cadman Plaza East, Brooklyn, New York, on the 27th day of May, 1976, at 10:00 am or as soon thereafter as counsel can be heard:

1. for an order pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure determining that this action is to be maintained as a class action pursuant to Rule 23(a) and Rule 23(b)(2) or, in the alternative Rule 23(b)(1)(A) or (B) of the Federal Rules of Civil Procedure, the class to be defined as all persons in the State of New York whose electric service to their residence is discontinued or is threatened to be discontinued by the defendant Con Edison, or any other public utility, for alleged tampering with a meter or nonpayment of charges and deposits imposed therefor, without adequate prior notice and hearing.

2. for an order pursuant to Rules 56 and 57 of the Federal Rules of Civil Procedure and 28 USC §2201 granting summary judgment in favor of plaintiff and class members declaring unconstitutional as violative of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution, §15 of the New York Transportation Corporation Law, Title 16, Parts 11 and 143 of the New York State Code of Rules and Regulations, and the applicable Con Edison Tariffs, as applied to plaintiff and her class, insofar as they authorize an electric corporation to discontinue the supply of electricity to the premises of a consumer for alleged tampering and/or nonpayment of a charge and increased deposit for said tampering, without first affording the consumer adequate notice and a prior opportunity to be heard on the central issues of the alleged tampering, her liability for the tampering, and the reasonableness of the charge or deposit, on

the grounds that plaintiffs are entitled to judgment as a matter of law; and

3. for an order pursuant to Rule 65 of the Federal Rules of Civil Procedure and 28 USC §2202 granting a permanent injunction permanently enjoining and restraining the defendants and their officers, agents, servants, employees and successors in office from the summary discontinuance of electricity to the premises of plaintiff and her class without first affording constitutionally adequate notice and hearing on disputed underlying issues of fact; and from acting pursuant to or relying upon §15 of the Transportation Corporations Law, Title 16, Parts 11 and 143, of the New York Code of Rules and Regulations, and the applicable Con Edison Tariffs in so acting; and

4. Granting such other and further relief as to this Court may seem just and proper.

Dated: Richmond, New York
May 13, 1976.

YOURS &c.
KALMAN FINKEL, ESQ.
THE LEGAL AID SOCIETY
CIVIL DIVISION
ATTORNEYS FOR PLAINTIFFS
JOAN MANGONES, ESQ.
STATEN ISLAND NEIGHBORHOOD OFFICE
42 RICHMOND TERRACE
STATEN ISLAND, N.Y. 10301
212-273-6677

DAVID GOLDFARB,
MARSHALL GREEN,
JOHN KIRKLIN, OF COUNSEL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----xCIVIL ACTION

VANESSA TAYLOR, on behalf of herself and all
other persons similarly situated,

: NO-76 C 583

PLAINTIFFS,

- against -

CONSOLIDATED EDISON CO. of NEW YORK, INC.,
CHARLES F. LUCE, individually and in his capa-
city as Chairman of CONSOLIDATED EDISON CO. of
NEW YORK, INC.; ARTHUR HAUSPURG, individually
and in his capacity as President of CONSOLI-
DATED EDISON CO. of NEW YORK, INC.; THE PUBLIC
SERVICE COMMISSION OF THE STATE OF NEW YORK;
ALFRED E. KAHN, individually and in his capa-
city as Chairman of the Public Service Commi-
ssion of the State of New York; and EDWARD P.
LARKIN, CARMEL CARRINGTON MARR, HAROLD A. JERRY,
JR., and EDWARD BERLIN, each individually and
in his capacity as Commissioner of the Public
Service Commission of the State of New York,
CONNIE ROHAN, as agent of the Public Service
Commission,

DEFENDANTS.

-----x

PLAINTIFF'S STATEMENT UNDER
GENERAL RULE 9(g) OF THE
MATERIAL FACTS AS TO WHICH
THERE EXISTS NO GENUINE
ISSUES TO BE TRIED.

1. Plaintiff, VANESSA TAYLOR, resides with her infant child at 273 Gordon Street, Staten Island, New York, first floor. Her sole income consists of a grant from the Department of Social Services; she has no valuable real or personal property of any kind.
2. Plaintiff moved into her apartment on or about December, 1975 and opened an account (#71-0252-2100-00046) with defendant Con Edison to supply electricity on or about December 16, 1975.
3. Defendant Con Edison is a public utility corporation incorporated under the laws of the State of New York and doing business in New York City and surrounding counties, with its corporate headquarters at 4 Irving Place, New York, New York.

Defendants CHARLES F. LUCE and ARTHUR HAUSPURG, are Chairman of the Board and President of Con Edison, respectively, and as chief corporation officers are responsible for the actions of Con Edison.

4. Defendant Con Edison is a "transportation corporation" within the meaning of the New York Transportation Corporations Law, and is an "electric corporation" within the meaning of New York Public Service Law. As such, and incidental to the public service with which it is charged, it is invested with all the powers, rights and duties prescribed therein, including the obligation to supply electricity and the power to discontinue electric service which is prescribed by §15 of the Transportation Corporations Law, and New York Code of Rules and Regulations.

5. Pursuant to applicable state law, Con Edison has been approved and enfranchised by the defendant PUBLIC SERVICE COMMISSION to supply electricity in New York City and surrounding areas. Con Edison supplies electricity to all five boroughs of New York and to Westchester County.

6. The defendants PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK and its Chairman and Members (hereinafter Public Service Commission), have jurisdiction and supervisory power over the manufacture, sales and distribution of electricity for light, heat and power, and over the policies and practices of defendant Con Edison as an "electric corporation."

7. Plaintiff received electric bills for the first two months of her service for \$3.50 and \$4.00 respectively.

8. The electric meters herein are located outside the building but on private fenced property.

9. On Friday, March 12, 1976 an agent of Con Edison entered onto the above property and disconnected the meter serving plaintiff's apartment resulting in a discontinuance of service to the apartment.

10. On Saturday March 13, 1975 plaintiff called the Emergency Service number for Con Edison and told them that she was without electricity. On that day electric service was restored, and plaintiff was told to call back Monday, March 15, 1976.

11. On Monday, March 15, 1976, plaintiff called Con Edison and was told that discontinuance of electric service to her apartment had been a mistake.

12. At approximately 1:30 pm on March 15, 1976 without any further notice an agent of Con Edison entered upon the property, disconnected the meter for plaintiff's apartment and put a steel plate on the meter, thus discontinuing her electric service.

13. On March 16, 1976, plaintiff again called Con Edison. Plaintiff was told for the first time that Con Edison has found evidence of tampering with her meter. Plaintiff denied any knowledge of said tampering. Plaintiff was told that in order to have service restored she would have to pay a \$100 charge plus a \$100 deposit.

14. On March 17, 1976, plaintiff called the Public Service Commission to file a complaint and ask to have her electric service restored. The Public Service Commission investigated

plaintiff's complaint by calling Con Edison. That same day the Commission called plaintiff back and told her that they denied her request to have service restored, and that in order to have service restored she would have to pay Con Edison the \$200 charge and deposit.

15. On March 18, 1976, plaintiff's attorney, on her behalf called the Public Service Commission and spoke to defendant CONNIE ROHAN. He was told that where tampering is alleged, the case is an exception to all the rules for nonpayment; that Con Edison does not have to give any notice of the shut-off nor is there any hearing process. She stated that the Commission had investigated the complaint, had called Con Edison, and would not request or order that service be restored.

16. On March 19, 1976, plaintiff's attorney spoke with defendant Rohan of the Public Service Commission in person.

17. On March 23, 1976, plaintiff's attorney spoke with DAVID SCHECTER of the Public Service Commission Law Department. Mr. Schecter stated that Con Edison did not act properly in summarily discontinuing service and that Mr. Furlong of the Public Service Commission "Power" Section would instruct Con Edison to restore plaintiff's electricity.

18. On or about March 23, 1976 the Public Service Commission contacted Con Edison. On or about March 23 or 24, 1976 at the behest of the Public Service Commission Con Edison restored plaintiff's electric service.

19. Defendants Con Edison and the Public Service Commission now contend that unless plaintiff pays the \$100 charge and \$100 deposit, Con Edison can enter the premises and disconnect

the meter thus terminating electric service without notice or hearing.

20. Con Edison's Tariff, PSC No.8-Electricity, has been duly filed with the New York State Public Service Commission. One of the provisions (General Rule III, 15) "Discontinuance or Withholding Service" was issued under authority of Opinion No. 73-20 and order of the Public Service Commission dated July 10, 1973.

21. The members of the asserted class are so numerous that joinder of all members is impracticable.

Dated: Richmond, New York
May 10, 1976.

RESPECTFULLY SUBMITTED,

DAVID GOLDFARB, ESQ., of Counsel to
JOAN MANGONES, ESQ.,
THE LEGAL AID SOCIETY
42 Richmond Terrace
Staten Island, N.Y. 10301
212-273-6677
Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK.

61L

-----xCIVIL ACTION

VANESSA TAYLOR, on behalf of herself and all
other persons similarly situated,

: NO-76 C 583

PLAINTIFFS,

- against -

CONSOLIDATED EDISON CO. of NEW YORK, INC.;
CHARLES F. LUCE, individually and in his capa-
city as Chairman of CONSOLIDATED EDISON CO. of
NEW YORK, INC.; ARTHUR HAUSPURG, individually
and in his capacity as President of CONSOLI-
DATED EDISON CO. of NEW YORK, INC.; THE PUBLIC
SERVICE COMMISSION OF THE STATE OF NEW YORK;
ALFRED E. KAHN, individually and in his capa-
city as Chairman of the Public Service Commi-
ssion of the State of New York; and EDWARD P.
LARKIN, CARMEL CARRINGTON MARR, HAROLD A. JERRY,
JR., and EDWARD BERLIN, each individually and
in his capacity as Commissioner of the Public
Service Commission of the State of New York,
CONNIE ROHAN, as agent of the Public Service
Commission,

: SUPPLEMENTARY
: AFFIDAVIT OF
: PLAINTIFF
: VANESSA TAYLOR

DEFENDANTS.

-----x

STATE OF NEW YORK)
COUNTY OF RICHMOND) SS.:

VANESSA TAYLOR, being duly sworn, deposes and says:

1. That I am the plaintiff in this action. That I am over the age of 18 years of age, having been born on June 7, 1957.
2. That I reside at 273 Gordon Street, Staten Island, New York, First floor, with my infant child. That neither my father, nor any other relative lives in the building. That a Robert Taylor does not live there, nor is Robert Taylor my father.
3. That in plaintiff's affidavit dated March 26, 1976, Paragraphs 6 and 7 and in the complaint herein Paragraphs 28 and 29, the years 1975 should read 1976; in affidavit Paragraphs 10 and 11 and in the complaint Paragraphs 32 and 33, the dates March 26, 1976 and March 27, 1976 should read March 16, 1976

and March 17, 1976, respectively.

4. That I did not tamper in anyway with my electric meter. That I did not give anyone access to my property for the purpose of tampering with my electric meter. That I have no personal knowledge of anyone tampering with my electric meter. That until March 24, 1976 when my attorney came ot the premises, I was not aware which meter was for my apartment.

5. When I called Con Edison on March 16, 1976 and was told evidence of tampering had been found, I told them that I was not in any way responsible for said tampering. :

6. When I called the Public Service Commission on March 17, 1976 to file a complaint, I told them that I was not in any way responsible for the alleged tampering.

7. When my attorney contacted Con Edison and the Public Service Commission on March 18 and 19, 1976, he also stated that I had not done nor had any knowledge of the alleged tampering.

WHEREFORE, for the reasons stated above and in my affidavit of March 26, 1976, I request that the relief sought in the annexed notice of motion be granted.

VANESSA TAYLOR

Sworn to before me
May 10, 1976.

MARTIN LUTHER KING, JR.
 44 West 12th Street, New York
 New York 10011
 New York County, New York
 O-100-100000-1, March 30, 1967

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x CIVIL ACTION NO.
VANESSA TAYLOR, on behalf of herself :
and all other persons similarly :
situated, :

PLAINTIFFS, : PLAINTIFF'S
- against - : AFFIDAVIT
:
CONSOLIDATED EDISON CO. of NEW YORK, :
INC., et al. :

DEFENDANTS. :
-----x

STATE OF NEW YORK)
COUNTY OF RICHMOND) SS.:

VANESSA TAYLOR, being duly sworn, deposes and says:

1. I am the plaintiff in this action and make this affidavit in support of a motion for a temporary restraining order and preliminary injunction enjoining defendants from withholding or discontinuing my electric service.

2. I live at 273 Gordon Street Staten Island, New York, in an apartment with my infant child.

3. My sole income consists of a grant from the Department of Social Services in the amount of \$52 each two weeks plus \$91.50 each two weeks for rent. I have no savings, no bank account, and no stocks, bonds, real property or valuable personal property of any kind.

4. The building in which I reside has two residences. I moved into my apartment on or about December 1975 and opened an account in my name with the defendant Con Edison to supply electricity on or about December 16, 1975. My account number is 71-0252-2100-00046. The meter for my electricity is located

outside my building in a fenced-in area, within view of the street.

5. I received electric bills for the first two months of service in the approximate amounts of \$4 and \$3 respectively.

6. On or about Friday, March 12, 1975, my electric service was turned off by Con Edison.

7. On or about Saturday March 13, 1975, I called the Emergency Service number for Con Edison. The service was restored and I was told to call back on Monday, March 15, 1976.

8. On Monday, March 15, 1976, I called Con Edison and was told that discontinuance of my electric service was a mistake.

9. On Monday, March 15, 1976 at approximately 1:30 pm my electric service was discontinued and a steel plate put on my meter.

10. On or about March 26, 1976 I again called Con Edison and was now told that Con Edison had found evidence of tampering with my meter. Therefore, in order to have service restored, I would have to pay a \$100 charge plus a \$100 deposit.

11. On Tuesday, March 27, 1976, I called the Public Service Commission to file a complaint and ask to have my service restored. Later on March 27, 1976 the Public Service Commission called back and told me they denied my request to have service restored and I would have to pay Con Edison the \$200 charge and deposit. On Thursday, March 18, 1976 I consulted the Staten Island Neighborhood Office of The Legal Aid Society.

12. On the day of March 18, 1976, David Goldfarb, Esq.,

The Legal Aid Society, called Con Edison on my behalf and was told: That on March 11, 1976 Con Edison had inspected the meter and found it jammed with matches; that in cases where meters are tampered with, even though they are outside the buildings, there is a presumption that the customer did the tampering; that in such cases an arbitrary charge is rendered and an increased deposit is required; that the \$100 charge is for unmetered service and that after service for those months can be estimated the remainder of the \$100 will be credited to the customer. That the \$100 deposit is based on the presumption that the customer stole electricity and that when the bills again reach 2/3rds of that deposit the electricity will be turned off again; that there was no hearing process for any of the above.

13. On Thursday, March 18, 1976, David Goldfarb, Esq., The Legal Aid Society, called the Public Service Commission on my behalf and spoke with Ms. Connie Rohan. He was told that Public Service Commission had investigated the complaint by calling Con Edison; that where tampering is alleged, the case becomes an exception to all the rules regarding notice and hearings; that Con Edison does not have to give any notice of shut-off, nor is there any hearing process; that Con Edison can prove that the meter was operating when service was turned on in December 1975 and that tampering had occurred while I was a customer; that was sufficient for a shut-off and/or requiring additional charges and deposits.

14. That on Friday, March 19, 1976, David Goldfarb, Esq., The Legal Aid Society, went on my behalf to the offices

of the Public Service Commission and spoke with Connie Rohan. He was told that under the Con Edison Tariff the customer is responsible for the safekeeping of the meter and that the company may withhold and discontinue service "in such manner as may be permitted by law" if the customer violates any rules or regulations; furthermore, that the New York State Transportation Corporations Law §15 and the New York State Rules and Regulations on hearings do not apply since this is not a nonpayment case, but a case of tampering.

15. I am at the present time without electric service in that I am unable to pay the \$100 charge and \$100 deposit required.

16. The shut-off of my electricity poses a serious hazard to my health and well-being and the health and well-being of my infant child. Our electric supply, is vital not only for our convenience and comfort, but for our very life and health. I cannot afford to move and I have no means to easily adapt to or adjust to such hardship.

17. The defendant Con Edison is the only supplier of electricity in the area in which I live and I cannot go elsewhere to obtain such service.

18. The defendant Con Edison's conduct in shutting off my vital utility services has caused me substantial uncertainty, worry and distress, as well as great expense and hardship. Unless actual withholding of electricity and discontinuance is restrained and enjoined, I am in danger of being subjected to the irreparable harm that such a loss of service occasions.

19. The defendants Con Edison, The Public Service Commission and the individual natural person defendants, have under color of New York statutes, regulations, and tariffs, subjected me to a deprivation of rights, privileges and immunities secured by the United States Constitution and Law.

WHEREFORE, I respectfully request that the temporary restraining order and preliminary injunction be granted.

Vanessa Taylor
VANESSA TAYLOR

Sworn to before me this

24th day of March, 1976.

David Goldfarb

DAVID GOLDFARB
Notary Public, State of New York
No. 40 000 000
Qualified in Richmond County
Commission Expires March 20, 1978

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

68

-----x CIVIL ACTION NO.

VANESSA TAYLOR, on behalf of herself :
and all other persons similarly :
situated, :

PLAINTIFFS, :

Attorney's Affidavit

- against - :

CONSOLIDATED EDISON CO. of NEW YORK, :
INC., et al. :

DEFENDANTS. :

-----x

STATE OF NEW YORK)
COUNTY OF RICHMOND) SS.:

DAVID GOLDFARB, being duly sworn, deposes and says:

1. I am an attorney with The Legal Aid Society, Staten Island Neighborhood Office, 42 Richmond Terrace, Staten Island, New York.

2. That on March 18, 1976 VANESSA TAYLOR, plaintiff herein, came to our office because defendants had discontinued her electric service and refused to restore same.

3. On March 18, 1976, I called Con Edison on behalf of Ms. Taylor and was told: That on March 11, 1976 Con Edison had inspected the meter and found it jammed with matches; that in cases where meters are tampered with, even though they are outside the buildings, there is a presumption that the customer did the tampering; that in such cases an arbitrary charge is rendered and an increased deposit is required; that the \$100 charge for unmetered service and that after service for those months can be estimated the remainder of the \$100 will be credited to the customer. That the \$100 deposit

is based on the presumption that the customer stole electricity and that when the bills again reach 2/3rds of that deposit the electricity will be turned off again; that there was no hearing process for any of the above.

4. March 18, 1976, I also called the Public Service Commission and spoke with Ms. Connie Rohan. I was told that the Public Service Commission had investigated the complaint by calling Con Edison; that where tampering is alleged, the case becomes an exception to all the rules for nonpayment; that Con Edison does not have to give any notice of shut-off nor is there any hearing process; that Con Edison can prove that the meter was operating when service was turned on in December 1975 and that tampering had occurred while Ms. Taylor was a customer; and that was sufficient for a shut-off and/or requiring additional charges and deposits.

5. That on Friday, March 19, 1976 I went to the office of the Public Service Commission and spoke with Connie Rohan. I was told that under the Con Edison Tariff the customer is responsible for the safekeeping of the meter and that the company may withhold and discontinue service "in such manner as may be permitted by law" if the customer violates any rules or regulations; furthermore, that the New York State Transportation Corporations Law §15, section on notice, and the New York State Rules and Regulations on hearings do not apply since this is not a nonpayment case, but a case of tampering.

6. On Tuesday, March 23, 1976, I spoke with David Schechter of the Public Service Commission Law Department. He advised me that Con Edison was not acting properly in summarily discontinuing electricity in this case. He said that Mr. Furlong of the Public Service Commission "Power" section would instruct Con Edison to restore Ms. Taylor's electricity.

7. On Wednesday, March 24, 1976, I called Mr. Furlong to find out if electricity had been resotred. He informed me that the Public Service Commission Legal Department had reconsidered and decided that Con Edison was authorized to discontinue service. However, they could request Con Edison to voluntarily restore service. Mr. Furlong later left a message that as of March 23, 1976, electric power had been restored.

8. On March 24, 1976, approximately 1:00 pm, I went to the premises and inspected the meter and no electric power was registering. I further spoke to Ms. Taylor who said there had been no electric power on March 23, 1976 or March 24, 1976.

WHEREFORE, we ask that the temporary restraining order be granted and the motion for a preliminary injunction be granted.

Sworn to before me this

24th day of March, 1976.

Joan Mangones

JOAN MANGONES
Notary Public, State of New York
No. 43-2506250
Qualified in Richmond County
Commission Expires March 30, 1977.

David Goldfarb
DAVID GOLDFARB

NEW YORK TRANSPORTATION CORPORATIONS LAW**§ 16. Refusal or neglect to pay rent**

1. If any person supplied with gas or electric light by any such corporation shall neglect or refuse to pay the rent or remuneration due for the same or for the wires, pipes or fittings let by the corporation, for supplying or using such gas or electric light or for ascertaining the quantity consumed or used as required by his contract with the corporation, or shall refuse or neglect, after being required so to do, to make the deposit required, such corporation may discontinue the supply of gas or electric light to the premises of such person; and the officers, agents or workmen of such corporation may enter into or upon such premises between the hours of eight o'clock in the forenoon and six o'clock in the afternoon, and separate and carry away any meter, pipe, fittings, wires or other property of such corporation, and may disconnect any meter, pipe, fittings, wires or other works whether the property of the corporation or not, from the mains, pipes or wires of the corporation. But the supply of gas or electric light shall not be discontinued for non-payment of bills rendered for service until and after a five-day written notice has been served upon such person either by delivering the same to such person personally or by mailing the same in post-paid wrapper addressed to such person at premises where service is rendered.

2. It shall be unlawful for any gas or electric corporation to discontinue the supply of gas or electricity to any person or persons receiving public assistance, for non-payment of bills rendered for service, if the payment for such service is to be paid directly by the department of social welfare or the public welfare official in such locality.

As amended L 1967, c. 495, eff. April 24, 1967.

§ 16, formerly entire section, numbered 1, L 1967, c. 495, eff. April 24, 1967.

Subd. 2 added L 1967, c. 495, eff. April 24, 1967.

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§ 2.3

at any hearing at which such an appearance is made, or the signature of any such person upon an application, petition or request filed with the commission on behalf of any such person, firm, corporation or association, shall be deemed to be compliance with this rule.

PART 2

HEARINGS AND REHEARINGS

Sec.

- 2.1 Notices
- 2.2 Conduct of case
- 2.3 Procedure
- 2.4 Appearances
- 2.5 Adjournments

Sec.

- 2.6 Adjournments—motor carriers of property
- 2.7 Initial decisions
- 2.8 Rehearings

Section 2.1 Notices. Hearings on complaints and applications will be held at such times and on such notice as the commission shall determine in each case. When a hearing has been ordered, the applicant may be required to publish a notice of said hearing in such newspapers and at such times as may be designated. At or before the hearing, the applicant shall file proof of due publication of such notice.

2.2 Conduct of case. At any hearing, a party to the proceeding may present his own case either personally or through a representative. All persons appearing before the commission must conform to the standards of conduct required of attorneys appearing before State courts. Failure to conform to these standards will be grounds for declining to permit their appearance in any further proceeding.

2.3 Procedure. [Statutory authority: Public Service Law, §§ 20, 66(12), 80 (10), 89-c(10), 92] At hearings, parties to the proceeding will be afforded reasonable opportunity to present evidence and examine and cross-examine witnesses. Examination of all witnesses will be conducted orally and stenographic minutes will be taken. If exhibits are offered, there shall be supplied at least two copies for the commission, one to remain in the official file of the proceeding; if the proceeding is on petition or complaint, one copy shall be supplied to such petitioner or complainant, and if convenient, one copy to each of the other parties. Notwithstanding the foregoing provision, in any case in which a major rate change is proposed, there shall be submitted with the tariff filing 10 copies of the prepared written testimony, in question and answer form, and exhibits which will comprise the utility company's direct case in support of its rate filing. At the hearing the utility company's direct case shall be limited substantially to the material submitted with its tariff filing unless the presiding officer for good cause shown, shall rule otherwise. Such prepared written testimony may be received in evidence with the same force and effect as though it were stated orally by the witnesses, provided that each of such witnesses shall be present at the hearing at which such prepared written testimony is offered and shall adopt, under oath, his prepared written testimony. The utility company shall supply a copy of said prepared testimony and exhibits to each party appearing in the rate proceeding. Anyone wishing to submit testimony in written form should prepare the testimony in accordance with the following guidelines: all pages are to be typed and double spaced. The top, bottom and left-hand margins should be at least one and one-half inches. The name of the witness should be typed at the top center of each page one inch from the edge. The page number for each page should be typed at the bottom center one inch from the edge. A square of approximately one and one-half inches in the upper right-hand corner of each page should

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be left clear for Public Service Commission use. Testimony should contain line numbers on the left-hand side of the page.

Historical Note

Sec. amd. filed Apr. 10, 1970; Jan. 29, 1971; July 19, 1971. Added last six sentences.

2.4 Appearances. The complainant, petitioner, any appearing governmental authority and the utility involved shall be considered parties to the proceeding. Any other person or corporation having an interest in the matters under consideration and who expects actively to engage in the hearing may, at the opening of the hearing or at any time thereafter, request the presiding commissioner or examiner to direct that his appearance be noted on the record as a party to the proceeding. If it appears that the granting of the request will aid in arriving at a proper determination, such request will be granted. Only parties to the proceeding shall be entitled to examine witnesses or receive copies of orders and decisions.

2.5 Adjournments. All parties should be prepared to proceed at the first hearing called in any proceeding. If a postponement of the first hearing is necessary, an application should be made in writing to the commission or the presiding commissioner or examiner, setting forth the reasons why an adjournment is necessary; such application should be filed in sufficient time to permit other parties to be notified. If the hearing cannot be completed at the time fixed, it will be adjourned from time to time by the presiding commissioner or examiner.

2.6 Adjournments—motor carriers of property. When a postponement of the first hearing is granted on the request of the applicant, and a timely written request for such postponement has not been made as provided in section 2.5 hereof, no date for the adjourned hearing shall be fixed and the case will be placed at the bottom of the list of unassigned cases to await reassignment in the order to which it is entitled by reason of that position. No further postponement will be granted and if the applicant is not prepared to proceed on the adjourned date the application will be denied. Request for postponement at the first hearing made by any person except the applicant will be denied.

2.7 Initial decisions. [Statutory authority: Public Service Law, § 20] (a) *Briefs.* Briefs as to facts and law will be received and may be required to be submitted in any proceeding. The presiding commissioner or examiner will fix the place of filing and the time within which briefs may be filed, and briefs received subsequent to such time may not be considered.

(b) *Tentative and recommended decisions.* In proceedings before it the commission may itself issue a tentative decision or may, at the outset or at any subsequent stage of a proceeding designate any of its responsible officers to do so. The report of such officer shall constitute a recommended decision. The tentative or recommended decision, as the case may be, shall be served upon all parties, or their attorneys of record, and upon staff counsel.

(c) *Exceptions to tentative or recommended decisions.* (1) Any party including staff counsel may take exception to a tentative or recommended decision. Exceptions shall be filed within 20 days after the filing or service of the decision (designated "briefs on exceptions"). "Briefs opposing exceptions" may be filed in response to briefs on exceptions within 15 days after the filing date for briefs on exceptions. These time periods may be extended by the secretary, in his discretion, upon application by any party. No further response will be entertained unless the commission, upon motion, or upon its own initiative, so orders. All briefs on exceptions and briefs opposing exceptions shall be filed with the secretary of the commission at Albany.

(2) Briefs on exceptions shall contain (i) a short statement of the case, (ii) a summary of the basic position of the party filing, (iii) the grounds upon which

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the exceptions rest, and (iv) the argument in support of the exceptions with appropriate reference to the record and to authorities relied upon. There may also be included specific proposed findings and conclusions in lieu of those to which exception is taken or in addition to those recommended. Briefs opposing exceptions shall follow the same form, but may omit a statement of the case.

(3) Briefs on exceptions and briefs opposing exceptions shall be self-contained and shall be limited to 50 pages in length. They shall clearly show the docket designation, title of the proceeding before the commission and the name of the party in whose behalf the filing is made. Twenty-five copies of each brief shall be filed with the commission. One copy shall be signed in ink by the party in interest or his attorney and shall include his post office address and telephone number. All copies filed shall be conformed to that copy. All briefs shall contain a signed affirmation that service has been made on all parties. The date of service shall be the day when briefs are deposited in the United States mail or when they are delivered in person, whichever the case may be. However, service on the commission shall be the date when the brief is received. If the last day for service falls on a day when the commission is not normally open for the conduct of regular business, service must be made by the close of business on the next regular business day.

(d) *Failure to except.* (1) Failure to file a brief on exceptions within the time allowed shall constitute a waiver of all objections to the tentative or recommended decision. Failure to except to any portion of a tentative or recommended decision shall constitute a waiver of all such objections to which exceptions have not been taken. Such objections to which a party has not excepted may not thereafter be raised before the commission in oral argument or in an application for rehearing.

(2) Failure of any party to except shall not preclude the commission from reviewing the tentative or recommended decision on its own motion.

(e) *Oral argument.* Any party or staff counsel who files a brief on exceptions or opposing exceptions may request that oral argument be held on the tentative or recommended decision and the exceptions thereto. Such motion must be filed within the time limited for the filing of briefs opposing exceptions. If the motion is granted by the commission all parties who filed briefs on exceptions will be afforded an opportunity to be heard. Oral argument shall be limited to matters properly raised on the record and specified in the exceptions, unless the commission otherwise directs.

(f) For good cause shown, parties or staff counsel may file a motion with the commission to modify the above rules for filing briefs on exceptions or opposing exceptions.

Historical Note

Sec. amds. filed: Apr. 10, 1970; Mar. 24, 1972 eff. Mar. 31, 1972. New sec. substituted.

2.8 Rehearings. (a) Applications for a rehearing after determination made by the commission shall be in writing and shall state specifically the grounds upon which the application is based, and shall set forth separately each error of law and fact alleged to have been made by the commission in its determination and the facts and arguments in support thereof. *At least two copies of the petition for rehearing shall be filed in the office of the commission at Albany within 30 days after service of final order upon the party who files such petition or upon his attorney.* The commission, at any time and on its own motion, may reopen a proceeding or grant a rehearing. When any determination, order or requirement of the commission is sought to be reversed, abrogated, changed or modified on account of facts or circumstances arising subsequent to the hearing or on account

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of consequences resulting from compliance with such determination, order or requirement which are claimed to justify a reconsideration of the proceeding, the matters relied upon by the applicant shall be set forth fully.

(b) A copy of the petition for rehearing must be served on all parties to the proceeding by the party asking for the rehearing, and there shall be attached to the petition filed with the commission an affidavit of such service. If any party to the proceeding wishes to oppose the granting of a rehearing, such party must file within five days from the receipt of a copy of the petition for a rehearing a statement setting forth the reasons why it is believed a rehearing should not be granted.

PART 3

FINANCIAL CONDITION DEFINED

Sec.

3.1 Information required

Section 3.1 [Information required.] Whenever a petitioner is required to state its financial condition, there shall be submitted the following information:

(a) Amount and classes of stock authorized by law or certificate of incorporation, as last amended.

(b) Where capital stock has been authorized by the commission, the case number and date of the order of such authorization.

(c) Separately for each class of stock: Par value, if any; amount actually paid to the corporation for such stock; amount of premium realized thereon; number of shares and par value, if any, of stock for which subscriptions have been received but which at the date of the balance sheet had not been fully paid and issued together with the agreed purchase price and amount of payments on such subscriptions.

(d) Terms of preference of each class of preferred stock.

(e) Separate statement for each class of non-par stock showing amount of each item transferred thereto from surplus or other accounts, the date of such transfer and the title of the account from which the transfer was made.

(f) Where bonds, notes or other evidences of indebtedness have been authorized by the commission, the case number and date of the order of such authorization.

(g) Brief description of each mortgage upon any property of the applicant giving date of execution, name of mortgagor, name of mortgagee or trustee, amount of indebtedness authorized to be secured thereby, amount of indebtedness actually incurred and brief description of mortgaged property.

(h) Separately for each bond issue: the number and amount of bonds authorized and issued; the amount outstanding, the outstanding bonds to be subdivided between actually outstanding and nominally outstanding (re-acquired); the name of the company which issued the bonds; the description of each class of bonds separately, giving date of issue, face value, rate of interest, date of maturity and how secured. If convertible bonds are authorized or outstanding, the date when the conversion privilege accrues and expires, the securities into which and the rate at which conversion may be made.

(i) Separate statement for each affiliated interest as defined by the Public Service Law; the amount of advances therefrom, the name of the creditor, the interest provisions, terms of settlement and purpose for which the advances were made; other indebtedness to each affiliated interest, except indebtedness represent-

SUBCHAPTER B

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Complaints

PART

11 Complaints—Form and Practice

PART 11

COMPLAINTS—FORM AND PRACTICE

(Statutory authority: Public Service Law, §§ 4, 20, 66, 71, 72, 80, 84, 85, 89(c), 89(i), 89(j), 92, 94, 96 and 97)

Sec.

11.1 Form of complaint

Sec.

11.2 Investigation, hearing and determination of complaints

Historical Note

Part 11 (§§ 11.1—11.3) repealed, new Part (§§ 11.1—11.2) filed May 10, 1973.

Section 11.1 Form of complaint. The commission requires no particular form of complaint; an individual consumer's complaint need not be in writing and may be initiated by telephone or in person at the offices of the commission. A written complaint need not be verified. The following, however, should be furnished in support of a complaint:

- (a) The name and address of the complainant or complainants.
- (b) The name and address of the person or corporation complained against.
- (c) The act or omission complained of, with the approximate date.
- (d) What relief has been sought from the person or corporation complained of, and the response, if any, from such person or corporation.

Historical Note

Sec. repealed, new filed May 10, 1973.

11.2 Investigation, hearing and determination of complaints. (a) When a complaint is filed, it will be investigated by the commission, through its staff, and may be served upon the person or corporation complained against with direction to satisfy the matter complained of or to file its answer thereto.

(b) In most instances, complaints concerning disputed bills, charges, deposits or service problems will be determined by such officers or employees of the commission as the chairman designates to act in its place. In exercising this function, the designated officers or employees may obtain the information required to make the necessary determination by conversation with the complainant or his or her representative by telephone or in person, supplemented where appropriate by written materials from the complainant, reports or documents from the utility (including such data as may be required by the staff at the request of the complainant or on its own initiative); through written complaints similarly supplemented; or through a conference conducted by the designated officer or employee at which the complainant, accompanied and assisted by such friend, adviser or attorney as he or she desires, and company representatives are present. Officers or employees designated to consider complaints will afford both the complainant and the utility a fair and reasonable opportunity to present evidence pertinent to the complaint and to

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challenge evidence submitted by the other party to the dispute. The complainant or utility complained of may obtain a written statement of the determination, including a brief reason for the conclusion.

Comment: In many cases, consumer complaints are resolved to the satisfaction of all parties on the basis of a staff review of the complaint, examination of pertinent company records, and inspection of pertinent company equipment (including metering devices). Staff determinations in cases which appear to be in such a category are, in the first instance, made on the basis of such evidence. To the extent that the initial determination relied on data not previously disclosed, the parties are afforded an opportunity to challenge the evidence relied upon by staff. Determinations of complaints relating to gas, electric or water billing disputes are, as a standard operating procedure, sent in writing to the complainant. In the case of communication service billing disputes, which frequently relate to only portions of a bill, many disputes are resolved primarily through telephone contacts, though written statements will always be supplied, if requested.

(c) After receipt of the answer to a complaint, and where the procedures described in section 11.2 (b) are not applicable or cannot reasonably resolve the issues raised by a complaint, the commission, on its own initiative, the recommendation of staff, or the request of the complainant or the utility, may call a public hearing, upon notice utilizing the procedures set forth in section 2.3 of this Title. When evidentiary issues relating to a complaint regarding bills or deposits where discontinuance of service for nonpayment has been threatened cannot, in the commission's view, reasonably be resolved pursuant to procedures described in section 11.2 (b), the commission will, except where it determines that judicial resolution of the dispute would be more appropriate, call a public hearing upon notice utilizing the procedure set forth in section 2.3 of this Title.

(d) Pending resolution of complaints, the commission may require appropriate interim relief. In the case of complaints regarding bills or deposits, the commission, without hearing or formal order, may, and in the absence of unusual circumstances, will preclude discontinuance of service or the issuance of any notice of discontinuance during the commission's investigation of such complaint, upon such terms and conditions as it deems appropriate.

Comment: In implementing this provision, the commission, for example, may require a customer, as a condition for avoiding a cutoff of service for nonpayment of a bill, to pay the undisputed portion of such a bill or, in appropriate circumstances, to pay such amounts as reasonably appear to reflect the cost of current usage.

(e) The chairman may designate such officers or employees as may be necessary to act in place of the commission in regard to all complaints.

Historical Note

Sec. repealed, new filed May 10, 1973.

11.3

Historical Note

Sec. repealed, filed May 10, 1973.

of appliances sold by such corporation or municipality or directly connected with jobbing work performed as an agent under an agency contract, whereby the corporation or municipality undertakes to do jobbing work for a stipulated profit or commission provided, however, that corporations or municipalities who now have such charges set forth in their tariff schedules need not refile such provisions.

PART 143

NOTICE OF DISCONTINUANCE OF COMPLAINT PROCEDURES

(Statutory authority: Public Service Law, §§ 4, 20, 66, 71 and 72)

Sec.

- 143.1 Notice of discontinuance—time
 143.2 Notice of discontinuance—format
 143.3 No discontinuance without verification of delinquent account
 143.4 Rapid posting of payments in response to notices of discontinuance
 143.5 No discontinuance on Saturday, Sunday, public holiday, or day on

Sec.

- which the main business office of the company is not open for business
 143.6 No additional notice required when payment by check is subsequently dishonored
 143.7 Discontinuance of service to entire multiple dwellings
 143.8 Billing disputes
 143.9 Publicizing complaint procedures

Historical Note

Part 143 (§§ 143.1–143.7) added, filed Nov. 21, 1972; amd. filed May 10, 1973. Substituted new Part title.

Decisions

1. Validity

Held that the provisions of the Public Service Commission rules and regulations providing for notice to the consumer of discontinuance of service and for hearing

of consumer's complaints are valid and constitutional (16 NYCRR 143.1 et seq.; 63.1 et seq.) *Levine v. Long Is. Light Co.*, 76 Misc 2d 247 (1973).

Section 143.1 Notice of discontinuance—time. (a) No electric corporation shall discontinue the supply of electricity for nonpayment of bills rendered for service or for failure to post a required deposit until:

- (1) at least five days after written notice has been served personally upon the person supplied
- (2) at least eight days after mailing written notice in post-paid wrapper to the person supplied, addressed to such person at premises where service is rendered, or
- (3) at least five days after the person supplied has either signed for or refused a registered letter containing written notice, addressed to such person at premises where service is rendered.

(b) If the person supplied has specified to the company in writing an alternate address for billing purposes, the notice authorized under paragraphs (2) and (3) of subdivision (a) shall be sent to such alternate address rather than to the premises where service is rendered.

Historical Note

Sec. added, filed Nov. 21, 1972.

143.2 Notice of discontinuance—format. (a) Every notice indicating discontinuance of service shall

- (1) clearly indicate in nontechnical language
 - (i) the reason for service discontinuance;
 - (ii) the total amount required to be paid by the customer to avoid discontinuance of service, indicating the amount for which the customer's account is in arrears or the required deposit, if any, which must be posted by the customer, or both;

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- (iii) a method whereby the customer may tender payment of the full sum due and owing, including any required deposit, to avoid the discontinuance of his service;
 - (iv) the availability of company procedures to consider customer complaints prior to discontinuance, including the address and phone number of the office of the electric company the customer may contact in reference to his account; and
 - (v) the earliest date on which discontinuance may be attempted; and
- (2) have printed on the face thereof in a size type capable of attracting immediate attention the following:

"THIS IS A FINAL DISCONNECT NOTICE. TO AVOID INCONVENIENCE, BRING THIS NOTICE TO THE ATTENTION OF THE COMPANY WHEN PAYING THIS BILL."

- (b) Where full compliance with subdivision (a) of this section is found by the commission to be infeasible or to impose an unreasonable burden upon the company, the commission may grant a waiver of the requirements of such subdivision upon approval by the commission of an alternate arrangement which accomplishes the basic purposes of this section.

Historical Note

Sec. added, filed Nov. 21, 1972; amd. filed May 10, 1973. Substituted new (a)(1)(iv).

143.3 No discontinuance without verification of delinquent account. (a) No electric corporation shall discontinue service for nonpayment of bills rendered or for failure to post a required deposit unless

- (1) it shall have verified that payment has not been received at any office of the company or at any office of an authorized collection agent through the end of the notice period required by this Part; and,

- (2) it shall have verified on the day disconnection occurs that payment has not been posted to the customer's account as of the opening of business on that day, or, shall have complied with procedures established pursuant to section 143.4 (b) of this Part.

- (b) In the case of a company which serves a geographical area of this State involving more than six counties, the commission may grant a waiver of the requirements of paragraph (1) of subdivision (a) upon approval by the commission of an alternate procedure for verification of payments which accomplishes the basic purposes of that paragraph.

Historical Note

Sec. added, filed Nov. 21, 1972.

143.4 Rapid posting of payments in response to notices of discontinuance. Every electric corporation shall take reasonable steps to establish procedures to insure that any payments made in response to notices of discontinuance, when the customer brings the fact that such a notice has been issued to the attention of the company or its collection agents, shall either (a) be posted to the customer's account on the day payment is received, or (b) be processed in some manner so that discontinuance will not occur.

Historical Note

Sec. added, filed Nov. 21, 1972.

143.5 No discontinuance on Saturday, Sunday, public holiday, or day on which the main business office of the company is not open for business. No electric corporation shall discontinue service to any person for nonpayment of bills or for

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failure to post a required deposit on a Saturday, Sunday, public holiday, or day on which the main business office of the company is not open for business. For purposes of this section, the term "public holiday" refers to those holidays enumerated in the General Construction Law.

Historical Note

Sec. added, filed Nov. 21, 1972.

143.6 No additional notice required when payment by check is subsequently dishonored. Receipt of a subsequently dishonored negotiable instrument in response to a notice of discontinuance shall not constitute payment of the customer's account, and no electric corporation shall be required to issue additional notice prior to discontinuance.

Historical Note

Sec. added, filed Nov. 21, 1972.

143.7 Discontinuance of service to entire multiple dwellings. (a) No electric corporation shall discontinue service to an entire multiple dwelling (as defined in the Multiple Dwelling Law or the Multiple Residence Law) without giving the notices specified in section 116 of the Public Service Law, provided that where any of the notices required thereunder are mailed in a post-paid wrapper there shall be no discontinuance of service until at least 18 days after the mailing of such notices.

(b) Section 143.3 through 143.6 shall be applicable with respect to the discontinuance of service to entire multiple dwellings.

Historical Note

Sec. added, filed Nov. 21, 1972.

143.8 Billing disputes. (a) Every electric corporation shall establish procedures whereby any complaint filed with such corporation by any customer thereof in regard to any bill for service rendered or any deposit required will be promptly investigated in an appropriate and fair manner, with the result of such investigation being promptly reported to the complaining customer. Such procedures shall allow the acceptance and processing of complaints submitted in simple manner and form. Regardless of whether a notice of discontinuance has previously been sent, the utility's procedures shall provide that pending the utility's investigation it shall not discontinue service or issue a notice of discontinuance; provided, however, the consumer may be required to pay the undisputed portion of a disputed bill or deposit to prevent discontinuance or the issuance of a notice of discontinuance.

(b) If, after the completion of such an investigation, the utility determines that the disputed service has been rendered, or that the disputed charge or deposit is proper, in whole or in part, the utility may require the full bill or deposit or the appropriate portion thereof to be paid; in such event, appropriate notice of the determination shall be given to the customer, and where notice of discontinuance of service has previously been sent, or is served with the determination, such notice shall include a statement advising the customer of the availability of the commission's complaint handling procedures. The utility's procedures may provide for discontinuance of service if the customer fails to pay such required amount after receipt of proper notice, provided that a customer's service will not be discontinued until at least five days after notice of the utility's determination, where personal service is made upon the person supplied, or at least eight days after mailing of such a notice; and provided further that no discontinuance may occur if so precluded by the commission pursuant to section 11.2(d) of this Title.

(c) The utility's procedures shall provide that, where the complaint procedures of the commission have been invoked and it is determined that the disputed service

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has been rendered, or that the disputed charge or deposit is proper, in whole or in part, a customer's service will not be discontinued for failure to pay the amount found appropriate until at least five days' notice of the commission's determination, where personal service is made upon the person supplied, or at least eight days after mailing of such a notice.

(d) The procedures required to be established under this section shall be filed with the commission for review. The commission shall be advised of any substantial changes in such procedures 30 days prior to their proposed implementation to permit commission review.

Historical Note

Sec. added, filed May 10, 1973.

143.9 Publicizing complaint procedures. (a) Every electric corporation shall, by a notice accompanying a regular bill or otherwise, advise each of its customers annually, unless otherwise directed by the commission, of the procedures available to the customer to register complaints in regard to service or disputed bills. Such notice shall clearly state the means by which a complaint can be made to the company and shall also advise the customer that, if after contacting the company the customer remains dissatisfied, he may contact the New York State Public Service Commission. Such notice shall further state that the Public Service Commission has a staff available to give assistance in such matters, and shall also specify an appropriate address of the Public Service Commission.

(b) Prior to circulating the notice required by subdivision (a) of this section, each utility shall submit to the commission for its approval the form of such notice and the intended program for its distribution.

Historical Note

Sec. added, filed May 10, 1973.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
VANESSA TAYLOR, on behalf of herself and all
other persons similarly situated,

PLAINTIFFS,

- against -

CONSOLIDATED EDISON CO. of NEW YORK, INC.;
CHARLES F. LUCE, individually and in his
capacity as Chairman of CONSOLIDATED EDISON
CO. of NEW YORK, INC.; ARTHUR HAUSPURG, in-
dividually and in his capacity as President
of CONSOLIDATED EDISON CO. of NEW YORK, INC.;
THE PUBLIC SERVICE COMMISSION OF THE STATE
OF NEW YORK; ALFRED E. KAHN, individually
and in his capacity as Chairman of the Pub-
lic Service Commission of the State of New
York; and EDWARD P. LARKIN, CARMEL CARRING-
TON MARR, HAROLD A. JERRY, JR., and EDWARD
BERLIN, each individually and in his capa-
city as Commissioner of the Public Service
Commission of the State of New York, CONNIE
ROHAN, as agent of the Public Service Commis-
sion,

DEFENDANTS.
-----X

CIVIL ACTION
NO. 76 C583 WB

DEFENDANT'S STATEMENT UNDER
GENERAL RULE 9(g) OF THE
MATERIAL FACTS AS TO WHICH
THERE EXISTS NO GENUINE
ISSUES TO BE TRIED.

1. As of December 16, 1975, plaintiff Vanessa Taylor
became defendant Con Edison's customer of record for the first
floor apartment at 273 Gordon Street, Staten Island, New York.

On that day a Company employee had disconnected the meter to the apartment because the previous tenant had left without paying the final bill and there was no new customer of record. The meter read 4,012 kilowatthours (kwhrs) at the time of disconnection. On February 19, 1976, after more than two months occupancy by the plaintiff, the meter was read and it still showed 4,012 kwhrs. On March 12, 1976 the meter read 4,112 kwhrs, an advance of 100 kwhrs. The condition of the meter indicated that the meter dial showing the advance of 100 kwhrs had been tampered with and manually advanced the 100 kwhrs.

2. On March 11, 1976 a Con Edison employee visually inspected the meter and saw that it had been tampered with and was not working because foreign material had been inserted in it to stop its registration. He left a notice stating that the tampered meter had been discovered and that the Company should be contacted immediately after the receipt of the notice at a given telephone. The notice stated that failure to call would be cause for disconnection of service without further notice. About twenty-four hours later on March 12, 1976 with no call to the Company by the plaintiff, or any other contact from her, her meter was disconnected. Thereafter, she was

informed that the Company calculated that the current she had used, but which had not been registered on the tampered meter was in the amount of \$100.00 and that amount plus a \$100.00 deposit would have to be paid before service was restored. She was further informed that if, upon review of her actual usage, the payment for the unmetered service proved to be too high, any excess would be credited to her account. The Company's calculation of charges for service used through a tampered meter is based on the best available data. A further check of the records is made 90 days after the meter has been corrected to determine if the estimated charges were correct. Defendant accepts installment payments of amounts due for service on tampered meters if customers are unable to pay the full amount.

3. Plaintiff, through her attorney, sought to involve the Public Service Commission in requiring defendant to restore plaintiff's service. The PSC has no regulations dealing with disconnection of service by a utility for meter tampering and the PSC did not assert jurisdiction over this matter or taking any official affirmative action in connection with it. On March 23, 1976, upon a request from a PSC Staff person, Con

Edison voluntarily restored electric service to the plaintiff. Other than plaintiff's unsubstantiated statement, defendant has no evidence that one of its employees stated that the discontinuance of her service was a mistake.

4. Prior to moving to the involved premises, plaintiff resided in an apartment in a two-family house in Staten Island where her monthly bills from Con Edison for electricity were generally in excess of \$30.00 and as high as \$45.00 per month. She left that prior apartment owing Con Edison \$221.24 for electric service, which amount was later paid by the Department of Social Services. In the two months following December 16, 1975, the date she became a customer of record at Con Edison, her bills for electric service were in the order of \$3.50 to \$4.00, the minimum amount provided under the Company's tariff, as her tampered meter reflected no usage. The previous occupant of plaintiff's present apartment was billed for electric service in a fourteen-month period in amounts ranging between \$12.23 and \$30.62 per month with ten of the bills being in excess of \$19 per month. There is no question, and plaintiff does not deny it, that Vanessa Taylor was receiving electricity through a tampered meter.

5. Transportation Corporations Law §15 limits utility company employees in entering customers' premises to specified hours for the purpose of disconnecting service for nonpayment. This section of the law explicitly applies to disconnections of service for nonpayment and requires that disconnection of service be preceded by five days' written notice. It does not purport to deal with disconnection of service for meter tampering. Defendant did not give five days' notice and did not act or purport to act under color of this statute in disconnecting plaintiff's service.

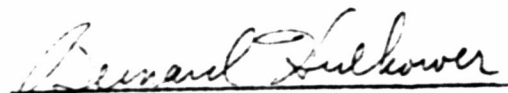
6. Defendant was empowered to disconnect plaintiff's service under its tariff regulations which require customers to protect defendant's meters from tampering and permits defendant to discontinue service to a customer who violates its tariff regulations. The tariff is a contract and violation of its terms gave the defendant the right to enter plaintiff's premises and to discontinue service. None of the tariff provisions upon which defendant relies in discontinuing service to plaintiff were subject to hearing or investigation by the New York Public Service Commission. They became effective without affirmative action by the PSC. Defendant also has the right at common law to enter a customer's premises for the purpose of peacefully halting the misappropriation of its property.

7. Defendant Con Edison provides electricity service to some 2.8 million customers in New York City and Westchester County, of whom some 2.4 million are residential customers. Electricity provided by Con Edison is measured through meters on customer premises which meters are furnished by the Company and remain the property of the Company at all times. Since the meters are within the control of the customer, the opportunity exists for tampering with the meters for the purpose of reducing the customer's payments for service. Con Edison is losing millions of dollars annually through the theft or misappropriation of service by way of meter tampering. This loss is reflected in increased rates borne by all customers on the Con Edison system.

8. In 1975 Con Edison charged off over \$52,000 in uncollectible bills. Of this amount, some \$31,000,000 was attributable to some 226,000 residential customers. This cost is reflected in increased rates borne by all customers on the Con Edison system.

Dated: New York, New York
June 7, 1976

RESPECTFULLY SUBMITTED,



Bernard Hulkower
Attorney for Defendants
130 E. 15th Street
New York, NY 10003
Tel. (212) 460-4075

VANESSA TAYLOR, on behalf of herself and all other persons similarly situated,

PLAINTIFFS,

-against-

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.; CHARLES F. LUCE, individually and in his capacity as Chairman of CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.; ARTHUR HAUSPURG, individually and in his capacity as President of CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.; THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK; ALFRED E. KAHN, individually and in his capacity as Chairman of the Public Service Commission of the State of New York; and EDWARD P. LARKIN, CARMEL CARRINGTON MARR, HAROLD A. JERRY, JR., and EDWARD BERLIN, each individually and in his capacity as Commissioner of the Public Service Commission of the State of New York, CONNIE ROMAN, as agent of the Public Service Commission,

DEFENDANTS.


STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

RICHARD N. ARCARI, being duly sworn, deposes and says supplementing his affidavit of April 21, 1976, in the above-entitled matter:

1. Con Edison enters into installment payment agreements with residential customers who are unable to pay the entire

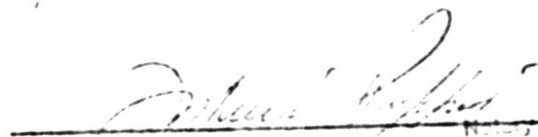
amount due to the Company for service rendered through a tampered meter. Our guidelines for residential customers in these circumstances provide that where the amount to be paid is up to \$249.00 the customer may be permitted to pay one-half down and the balance over a three-month period. Where the amount owed is between \$250.00 and \$499.00, a residential customer may be permitted to pay one-half down and the balance over a six-month period or one-third down and the balance over a three-month period. Similar terms are available for larger amounts.

2. Plaintiff Vanessa Taylor as a residential customer receives electric service from Con Edison pursuant to the rates, charges and conditions of Service Classification No.1 of the Company's tariff. A copy of the three leaves or pages of Service Classification No. 1 is attached. Special Provision H provides that the general rules of the tariff are applicable to customers taking service under this Service Classification.



Richard N. Arcari

Sworn to before me this
 7th day of June, 1976.



MARIO PUPPIO
 Notary Public, State of New York
 No. 63,407,112
 Qualified in Erie County
 Commission Expires March 31, 1978

SERVICE CLASSIFICATION No. 1

RESIDENTIAL AND RELIGIOUS

Applicable to Use of Service for

Light, heat and power, when supplied directly by the Company to any single-family dwelling or building or to any individual flat or apartment in a multiple-family dwelling or building or portion thereof occupied as the home, residence or sleeping place of one or more persons, or when supplied directly by the Company to any corporation or association organized and conducted in good faith for religious purposes, where such electric service is utilized exclusively in connection with such religious purposes, subject to the Special Provisions hereof.

Character of Service

Of the various characteristics of service listed and more fully described in General Rule III-2, the following may be designated for service by the Company under this Service Classification, subject to the limitations set forth in such Rule. Frequencies and voltages shown are approximate. All are continuous.

Standard Service

Any derivative of the standard alternating current, 3 phase, 4 wire system at 60 cycles and 120/208 volts

Non-Standard Service

Direct Current at 120, 120/240 or 240 volts
Low Tension Alternating Current—60 cycles:
Single phase at 120/240 volts
Three phase at 240 volts
Two phase at 120/240 or 200 or 240 volts

Rate

Energy Charge (per month)

For the first 10 kwhr (or less)	\$3.27
For excess over 10 kwhr	6.915 cents per kwhr
For excess over 1500 kwhr where such service is used for religious purposes as defined in Special Provision A hereof	6.680 cents per kwhr
For consumption between 360 kwhr and 780 kwhr, when service is used pursuant to Special Provision F hereof	5.210 cents per kwhr

For all customers under this service classification there will be an additional charge effective March 20, 1975 and for not more than one year thereafter of 0.0023 cent per kwhr. There will be an additional charge of .50 cent per kwhr during the summer period. The summer period will be defined as the first scheduled monthly billing period ending after May 15 and for four successive monthly billing periods thereafter.

Fuel Adjustment

The charges set forth herein shall be subject to a fuel adjustment per kwhr supplied hereunder when changes from the base cost of fuel occur (as explained on Leaf No. 27).

Transfer Adjustment

The charges set forth herein shall be subject to a transfer adjustment per kwhr supplied hereunder (as explained on Leaf No. 28-B).

Increase in Rates and Charges

The rates and charges under this Service Classification including fuel adjustment, summer surcharge, transfer adjustment and minimum charge are increased by the applicable percentage shown on Leaf No. 28 for service supplied within the municipality where the Customer is taking service.

Minimum Charge

\$3.27 per month, exclusive of fuel adjustment, summer surcharge, transfer adjustment and increase in rates and charges.

(Service Classification No. 1—Continued on Leaf No. 35)

Date of Issue: March 8, 1976

Effective March 15, 1976, under authority of
Public Service Commission of New York,
Order dated March 1, 1976 in Case No. 2077

Date Effective: April 8, 1976

Issued by JOHN V. THORNTON, Vice President
4 Irving Place, New York, N. Y. 10003

SERVICE CLASSIFICATION No. 1—Continued

RESIDENTIAL AND RELIGIOUS

Terms of Payment

Net cash on presentation of bill

Term

30 days from the date of installation of service hereunder; terminable thereafter by the Customer upon 5 days' prior notice, and by the Company in accordance with law or the provisions of this Rate Schedule.

Special Provisions

A. ELECTRICITY WILL BE SUPPLIED UNDER THIS SERVICE CLASSIFICATION, AND IT IS AVAILABLE: To any single-family dwelling or building or to any individual flat or apartment in a multiple-family dwelling or building or portion thereof occupied as the home, residence or sleeping place of one or more persons, including also the following:

- (1) Electric service used for portions of, or equipment in, a two or three-family dwelling or building enjoyed in common by all of the residents thereof (for example, halls, stairs, cellar, oil burner, and similar conveniences), when the wiring is arranged for supply of service through a single meter of one of the flats or apartments.
- (2) Electric service used for structures or equipment accessory to a one, two or three-family dwelling or building (for example, a private garage, guest or service house, outdoor lighting or equipment, and similar improvements), when the accessory structures are located on the same premises as such dwelling or building, and the wiring is arranged for supply of service through a single meter of the dwelling or one of the flats or apartments.
- (3) Electric service used for furnished rooms rented by the Customer or table board supplied to occupants thereof, when such renting or board is incidental to the residential occupancy by the Customer of a dwelling, flat or apartment and the number of rooms rented or offered for rent does not exceed one-half of the number of rooms in the dwelling, flat or apartment and the number of boarders, roomers or lodgers does not exceed four.

To any corporation or association organized and conducted in good faith for religious purposes, where such electric service is utilized exclusively in connection with such religious purposes.

B. ELECTRICITY WILL NOT BE SUPPLIED UNDER THIS SERVICE CLASSIFICATION, AND IT IS NOT AVAILABLE FOR RESIDENTIAL PREMISES AND USES:

- (1) Except as defined under Paragraph A above.
- (2) Where any part of a building, house, flat or apartment, occupied as a home, residence or sleeping place by one or more persons, other than as provided under Paragraph A above, is also used for the conduct of business or any activity non-residential in character, unless the wiring is separate and the part devoted to such non-residential purposes is metered separately and billed under another and appropriate Service Classification.
- (3) For multiple-family dwellings or buildings (such as residential hotels and furnished apartments), other than as provided under Paragraph A above, where the business of renting rooms, either with or without meals or service, is carried on, except where the electric service is rendered by the Company directly to the resident-tenant.
- (4) For multiple-family dwelling or building hall lighting, pumping, central refrigeration, water-heating or elevator operation, other than as provided under Paragraph A above.

C. ELECTRICITY WILL NOT BE SUPPLIED UNDER THIS SERVICE CLASSIFICATION, AND IT IS NOT AVAILABLE FOR RELIGIOUS PURPOSES AND USES:

- (1) Except as defined under Paragraph A above.
- (2) Where any part of the premises used for such religious purposes is used regularly for business purposes, any activity operated for profit, or for purposes other than such religious purposes, as defined, unless the wiring is separate and the part used for non-religious purposes is metered separately and billed under another and appropriate Service Classification.

(Service Classification No. 1—Continued on Leaf No. 36)

Date of Issue: August 18, 1970 Effective September 8, 1970, under authority of Public Service Commission, State of New York, Special Permission Order No. EL-16412, dated September 1, 1970. Date Effective: September 17, 1970

Issued by W. J. MURPHY, Assistant Vice President
4 Irving Place, New York, N. Y. 10003

SERVICE CLASSIFICATION No. 1—Continued

RESIDENTIAL AND RELIGIOUS

Special Provisions—Continued

D. ELECTRICITY WILL NOT BE SUPPLIED UNDER THIS SERVICE CLASSIFICATION, AND IT IS NOT AVAILABLE FOR EITHER RESIDENTIAL PREMISES AND USES OR RELIGIOUS PURPOSES AND USES:

(1) Where the Company's service and supply of electric energy, under this Service Classification, in or to any buildings or premises or to the owner, or to any tenant or occupant thereof, is or will be furnished otherwise than directly to such owner, tenant or occupant as a Customer of the Company, through the Company's individual meters, upon the individual application of such owner, tenant or occupant to the Company; and the Company's service will be supplied under this Service Classification only on condition that electric service furnished to such buildings or premises or to the owner, or to any tenant or occupant thereof, is for his, her or its own use and will not be remetered (or submetered), resold, assigned or, except as provided under Paragraph A above, otherwise disposed of to another or others.

E. Where the service furnished under this Service Classification is used by a Customer for the operation of water heating equipment which is permanently installed and exclusively supplies all parts of the premises which the Customer elects to supply with water heating and no other water heating equipment is connected or available for use in any part of the premises, an energy charge of \$2.00 cents per kw-hr is applicable as shown under the "Rate" provision of this Service Classification.

F. The foregoing rates and charges shall apply to all electric service supplied hereunder on and after the effective date hereof. Where a bill includes periods both before and after such effective date, the rates and charges applicable will be prorated based on the number of days of service rendered before and after the effective date related to the total number of days in the billing period.

G. The following Riders may be applied to this Service Classification:

Where residential premises are supplied, Riders C, D and E.

Where religious premises are supplied, Riders B, C, D and E.

H. For general rules, regulations, terms and conditions under which service will be supplied, see Leaves Nos. 4 to 23, inclusive.

I. For form of application under this Service Classification, see Leaves Nos. 29 and 30.

Date of Issue: March 8, 1976

Effective March 12, 1976, under authority of
Public Service Commission, State of New York,
Order dated March 12, 1976 in Case No. 10003

Date Effective: April 8, 1976

Issued by JOHN V. THORNTON, Vice President
4 Irving Place, New York, N. Y. 10003

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: CIVIL ACTION
:NO. 76 C583 WB

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kwhrs to 4,112 kwhrs.

This was evidenced by the fact that the dials, which indicate the quantity used, and which are coordinated by interrelated gears, were not in proper relationship to each other. The relative positions of the dials could not have been achieved in the normal operation of the meter. This indicated that at least one of the dials had been manually moved.

Richard S. Paul

Richard Paul

Sworn to before me this

7 day of June, 1976.

Walter S. Forner

WALTER S. FORNER
Notary Public in and for New York
No. 30240150
County of New York
Certified to be a Notary Public in New York County
Commission Expires March 30, 1978

the Company so that no electric current would flow through it. At the time of this disconnection said meter read 4,012 kilowatthours.

In early February and prior to February 19, 1976, the plaintiff, Vanessa Taylor, applied to the Company for electric service for the first floor apartment at 273 Gordon Street retroactive to December 16, 1975. At this time the plaintiff had indicated she had been living in the above address or at least two months.

On February 19, 1976, the meter for the first floor apartment at 273 Gordon Street read 4,012 kilowatt-hours.

On March 12, 1976, when said meter was first disconnected because of tampering, it read 4,112. As more fully explained in the supplemental affidavit of Richard Paul the condition of the meter dials indicated that the hundreds unit dial had been moved manually one unit.

From March 26 to April 19, 1976, 334 kilowatt-hours of electricity were consumed at the first floor apartment at 273 Gordon Street. The charge for such consumption is \$30.35.

From April 19 to May 18, 1976, 275 kilowatthours were consumed at the same apartment. The charge for such consumption is \$26.48.

Herbert Warner
HERBERT WARNE

Sworn to before me this
7 day of June, 1976.

Walter G. Richter

WALTER G. RICHTER
Notary Public, State of New York
For the County of New York
Commission Expires June 15, 1978

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

VANESSA TAYLOR, on behalf of herself and
all other persons similarly situated,

Plaintiffs,

- against -

CIVIL ACTION
No. 76 C 583

CONSOLIDATED EDISON CO. OF NEW YORK, INC.;
CHARLES F. LUCE, individually and in his capacity as Chairman of CONSOLIDATED EDISON CO. OF NEW YORK, INC.; ARTHUR HAUSPURG, individually and in his capacity as President of CONSOLIDATED EDISON CO. OF NEW YORK, INC.; THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK; ALFRED E. KAHN, individually and in his capacity as Chairman of the Public Service Commission of the State of New York; and EDWARD P. LARKIN, CARMEL CARRINGTON MARR, HAROLD A. JERRY, JR., and EDWARD BERLIN, each individually and in his capacity as Commissioner of the Public Service Commission of the State of New York, CONNIE ROHAN, as agent of the Public Service Commission,

Judge Bruchhausen

Defendants.

-----x

STATEMENT ON BEHALF OF THE PUBLIC
SERVICE COMMISSION DEFENDANTS UNDER
GENERAL RULE 9(g).

Having previously moved to dismiss the complaint,
the members and an employee of the New York Public Service
Commission, who are sued here individually, have urged,
in essence, that there are no material issues of fact to be

tried in that the acts on the part of the defendant Consolidated Edison Company of New York, Inc. complained of do not constitute state action and accordingly that no action lies here under the authority of Jackson v. Metropolitan Edison Company, 419 US 345 (1975).

The statement pursuant to General Rule 9(g) submitted by plaintiff in connection with her cross motion for summary judgment, however, contains certain misstatements pertaining to the role of the Public Service Commission in her controversy with the defendant Consolidated Edison. Specifically, paragraphs 17 through 19 of plaintiff's Rule 9(g) statement are incorrect in their present form and we respectfully submit a counter statement modifying these paragraphs to read as follows:

17. On March 23, 1976, plaintiff's attorney spoke with DAVID SCHECHTER, a member of the Office of Counsel to the Public Service Commission regarding the alleged summary discontinuance of his client's electrical service for meter tempering. Mr. Schechter indicated that he would look into whether Consolidated Edison acted properly in summarily discontinuing service as alleged and that, in the interim, Mr. Christopher Furlong, a member of the

Commission's Consumer Service Section, would request the utility to restore plaintiff's electrical service pending further investigation by Commission personnel.

18. On or about March 23, 1976, Mr. Furlong contacted Con Edison and on or about March 23 or 24, 1976 at his request, Con Edison restored plaintiff's electrical service.

19. Defendant Con Edison has asserted that it properly entered upon plaintiff's premises to remove the meter and discontinue electric service for alleged meter tampering on the part of plaintiff, has attempted to impose a \$100 charge for non-metered service prior to such removal and has demanded that plaintiff post a \$100 deposit as a condition to restoration of service. An investigation is pending by the Commission staff into whether such charge and deposit is excessive but as previously indicated, staff is not looking into the propriety of the cut-off.

It should be noted that references here to the Commission are to the Commission staff, who are authorized to handle complaints in the first instance, but it should be understood that staff's actions are subject to further review in the administrative process and can in no way be deemed final Commission action.

Dated: New York, N.Y.
June 4, 1976

Respectfully submitted,

PETER H. SCHIFF
General Counsel
Public Service Commission
of the State of New York
Attorney for defendants Kahn,
Larkin, Marr, Jerry, Berlin and
Rohan.

By:


DAVID SCHECHTER
of Counsel

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

VANESSA TAYLOR, on behalf of herself :
and all other persons similarly :
situated, :

Plaintiffs, :

-against- : No. 76 C 583

CONSOLIDATED EDISON CO. OF NEW YORK, :
INC., et al., :

June 28, 1976

Defendants. :

----- x

Appearances:

Kalman Finkel, Esq
The Legal Aid Society
Attorney for Plaintiffs
Joan Mangones, Esq
Staten Island Office
David Goldberg, Esq
Marshall Green, Esq
John Kirklin, Esq
Of Counsel

Williams & O'Neill, Esqs
Attorneys for Defendant
Consolidated Edison Company
of New York, Inc
Charles F. Luce, Arthur Hauspurg
Bernard Hulkower, Esq
Jonathan R. Sheiner, Esq
Thomas J. Farrelly, Esq
Of Counsel

Peter H. Schiff, Esq
General Counsel
Public Service Commission of
the State of New York
David Schechter, Esq
Of Counsel

BRUCHHAUSEN, D. J.

The plaintiffs move for summary judgment,
permanent injunction and class certification.

The defendant, Consolidated Edison Co. of New
York, Inc., hereinafter referred to as Con Edison, moves
for dismissal of the complaint.

The principal issue herein is whether Con
Edison unlawfully terminated electric service to the
apartment of the plaintiff, Vanessa Taylor.

The Court rules that there is no basis for State
action against the defendant, The Public Service Commis-
sion of the State of New York and none for Federal juris-
diction. See Jackson v. Metropolitan Edison Co., 419
U. S. 345.

FINDINGS

As of December 16, 1975, plaintiff Vanessa
Taylor became Con Edison's customer of record for the first

floor apartment at 273 Gordon Street, Staten Island, New York. On that day a Company employee had disconnected the meter to this apartment because the previous tenant had left without paying the final bill and there was no new customer of record. The meter at the time of disconnection read 4,012 kilowatthours (kwhrs). On February 19, 1976, after more than two months occupancy by plaintiff, the meter was read and it still showed 4,012 kwhrs. On March 12, 1976 the meter read 4,112 kwhrs, an advance of 100 kwhrs. The condition of the meter indicated that the meter dial showing an advance of 100 kwhrs had been tampered with and manually advanced the 100 kwhrs.

On March 11, 1976 a Con Edison employee visually inspected the meter and saw that it had been tampered with and was not working because foreign material had been inserted in it to stop its registration. He left a notice stating that the tampered meter had been discovered and that the Company should be contacted immediately after the receipt of the notice at a given telephone number. The notice stated that failure to call would be cause for disconnection of service without

further notice. About twenty-four hours later, with no call to the Company by the plaintiff, or any other contact from her, her meter was disconnected. Thereafter, she was informed that the Company calculated that the current she had used, but which had not been registered on the tampered meter was in the amount of \$100.00 and that amount plus a \$100.00 deposit would have to be paid before service was restored. She was further informed that if, upon review of her actual usage, the payment for the unmetered service proved to be too high, any excess would be credited to her account. Defendant accepts installment payments of amounts due for service on tampered meters if customers are unable to pay the full amount.

On March 23, 1976 Con Edison voluntarily restored electric service to the plaintiff.

Prior to moving to the involved premises, plaintiff resided in an apartment in a two-family house in Staten Island where her monthly bills from Con Edison for electricity were generally in excess of \$30.00 and as high as \$45.00 per month. She left that prior apartment owing Con Edison \$221.24 for electric service, which

106

amount was later paid by the Department of Social Services. In the two months following December 16, 1975, the date she became a customer of record at Con Edison, her bills for electric service were in the order of \$3.50 to \$4.00, the minimum amount provided under the Company's tariff, as her tampered meter reflected no usage.

Defendant, Con Edison, was empowered to disconnect plaintiff's service under its tariff regulations, which permit entry on to customer premises and discontinuance of services in cases of meter tampering.

Upon due deliberation, it is ordered that the plaintiffs' motions be denied and that the defendant's motion to dismiss the complaint be and the same is hereby granted.

Copies hereof will be forwarded to the attorneys for the parties.

Uta Bueckhauzen
Senior U. S. D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
CLERK'S OFFICE
U.S. DISTRICT COURT ED. NY

JUN 30 1976

TIME 1:11 PM

VANESSA TAYLOR, on behalf of herself
and all other persons similarly
situated,

Plaintiffs,

JUDGMENT

- against -

76 C 583

CONSOLIDATED EDISON CO. NEW YORK
INC., et al.,

Defendants.

FILED

A memorandum and order of the Honorable Walter Bruchhausen,

United States District Judge, having been filed on June 28, 1976,
granting defendants' motion to dismiss the complaint, it is

ORDERED and ADJUDGED that the plaintiff take nothing of
the defendant and that the defendants' motion to dismiss the com-
plaint is granted.

Dated: Brooklyn, New York
June 29, 1976

Luis Orgel
Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

108

VANESSA TAYLOR, on behalf of herself and
all other persons similarly situated,

Plaintiffs,

- against -

CONSOLIDATED EDISON CO. of NEW YORK, INC.; CHARLES F. INCE, individually and in his capacity as Chairman of CONSOLIDATED EDISON CO. of NEW YORK, INC.; ARTHUR HAUSPURG, individually and in his capacity as President of CONSOLIDATED EDISON CO. of NEW YORK, INC.; THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK; ALFRED E. KOHN, individually and in his capacity as Chairman of the Public Service Commission of the State of New York; and EDWARD P. LARKIN, CARAMEL CARRINGTON MARR, HAROLD A. JERRY, JR., and EDWARD BURLIN, each individually and in his capacity as Commissioner of the Public Service Commission of the State of New York. CONNIE ROSEN, as an agent of the Public Service Commission.

Defendants.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

All of the defendants having moved upon Notices of Motion, dated April 22, 1976, for an order dismissing the complaint herein, on several grounds including grounds that the court had no jurisdiction over the subject matter, and that the plaintiff had failed to state a claim upon which relief could

be granted, and the plaintiff having moved upon Notice of Motion dated March 26, 1976, for an order granting a preliminary injunction, and upon a Notice of Motion dated May 13, 1976, an order granting summary judgment, the said motions duly coming to be heard on June 10, 1976.

Now upon reading the affidavits and memoranda of law submitted by the parties and the oral arguments of counsel for the plaintiff and the defendants and in support of their several motions and in opposition of each other's motions, due deliberation having been had, and upon filing the opinion of the Court, dated June 28, 1976, the Court being fully advised finds that:

1. None of the defendants engaged in state action in discontinuing electric service to the plaintiff.
2. The plaintiff has failed to state a claim upon which relief can be granted against any of the defendants.
3. This Court lacks jurisdiction over the subject matter of this action.

And it is hereby

ORDERED that said motions of the defendants for the dismissal of the complaint be and the same hereby be granted

in all respects, and it is further ordered that this action against the defendants Consolidated Edison Company of New York, Inc., Charles F. Luce, Arthur Hauspurg, the Public Service Commission, its Commissioners and named employees be, and the same hereby are dismissed with costs, and that said motions of the plaintiff be and the same hereby are denied in all respects.

/s/

Walter Bruchhausen
United States District Judge

DATED: July 1, 1976

~~_____~~

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TT 1

VANESSA TAYLOR, on behalf of herself and all
other persons similarly situated,

-xCIVIL ACTION
:NO.76 C 583

PLAINTIFFS,

- against -

:
:
: NOTICE OF
: APPEAL

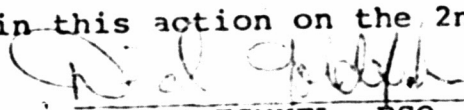
CONSOLIDATED EDISON CO. of NEW YORK, INC.;
CHARLES F. LUCE, individually and in his capa-
city as Chairman of CONSOLIDATED EDISON CO. of
NEW YORK, INC.; ARTHUR HAUSPURG, individually
and in his capacity as President of CONSOLI-
DATED EDISON CO. of NEW YORK, INC.; THE PUBLIC
SERVICE COMMISSION OF THE STATE OF NEW YORK;
ALFRED E. KAHN, individually and in his capa-
city as Chairman of the Public Service Commi-
ssion of the State of New York; and EDWARD P.
LARKIN, CARMEL CARRINGTON MARR, HAROLD A. JERRY,
JR., and EDWARD BERLIN, each individually and
in his capacity as Commissioner of the Public
Service Commission of the State of New York,
CONNIE ROHAN, as agent of the Public Service
Commission,

DEFENDANTS.

:
:-x

SIRS:

NOTICE IS HEREBY GIVEN that VANESSA TAYLOR, on behalf of
herself and all other persons similarly situated, plaintiff
above-named, hereby appeals to the United States Court of Appeal
for the Second Circuit from the Order of the Honorable Walter
Bruchhausen United States District Judge, dismissing the complaint
herein and denying plaintiff's motion for preliminary injunction and
summary judgment, entered in this action on the 2nd day of July, 1976.


KALMAN FINKEL, ESQ.,
JOAN MANGONES, ESQ.,
THE LEGAL AID SOCIETY
ATTORNEY FOR PLAINTIFFS
42 RICHMOND TERRACE
STATEN ISLAND, NEW YORK 10301
212-273-6677

DAVID GOLDFARB,
MARSHALL GREEN,
JOHN E. KIRKLIN, of Counsel

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V. Liger

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by J R Shuman